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March 7, 2007

Via Hand Delivery

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

PUCO

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RECEIVED-DOCKETING DIV


RE: In the Matter of the Complaint of Ohio Power Company v. Consolidated Electric Cooperative, Inc.;
PUCO Case No. 06-890-EL-CSS

Dear Ms. Jenkins:

Enclosed for filing on behalf of Consolidated Electric Cooperative, Inc. in the above-referenced matter is the original transcript of the deposition of Charles Pscholka, taken on Friday, January 5, 2007, along with attached exhibits.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosure

cc: Steven Lesser, Attorney Examiner

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1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2 - - -

3
4 In the Matter of the Complaint :
5 of Ohio Power Company, :
6 Complainant, : Case No.
7 vs. : 06-890-EL-CSS
8 Consolidated Electric :
9 Cooperative, Inc. :
10 Respondent. :

11 - - -

12 DEPOSITION

13 of Charles Pscholka, taken before me, Michael O.
14 Spencer, a Notary Public in and for the State of
15 Ohio, held at the offices of the Village of
16 Lexington, 44 West Main Street, Lexington, Ohio,
17 on Friday, January 5, 2007, at 10:00, A.M.

18 - - -

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22 185 S. Fifth Street, Suite 101
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ORIGINAL

PUCO

2007 MAR -7 PM 4:22

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1 APPEARANCES:

2 Porter Wright Morris & Arthur LLP
3 By Mr. Daniel R. Conway
4 41 South High Street
5 Columbus, Ohio 43215

6 On behalf of Ohio Power
7 Company.

8 Thompson Hine LLP
9 By Mr. William R. Case
10 10 West Broad Street
11 Columbus, Ohio 43215

12 On behalf of Consolidated
13 Electric Cooperative, Inc.

14 Renwick, Welsh & Burton
15 By Mr. Harry M. Welsh
16 Nine North Mulberry Street
17 Mansfield, Ohio 44902

18 On behalf of the Village
19 of Lexington, Ohio.

20 ALSO PRESENT:
21 Timothy J. Wells
22 Philip Caskey

23 - - -
24

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Friday Morning Session,
January 5, 2007.

- - -

CHARLES PSCHOLKA

being by me first duly sworn, as hereinafter
certified, deposes and says as follows:

EXAMINATION

By Mr. Case:

Q. Good morning.

A. Good morning.

Q. Could you state your name for the
record?

A. Charles F. Pscholka.

Q. Mr. Pscholka, I am Bill Case and I
am counsel for Consolidated Rural Electric
Cooperative, and we have through your counsel
arranged for your deposition today. I am going
to ask you a few questions. I don't think we
will be here to awfully long.

A. Okay.

Q. But I will try to make my questions
clear. If you don't understand them ask me to
clarify and I will do that. Fair enough?

A. Yes.

1 MR. CONWAY: Bill, if we could just
2 take a second. I had one comment to make at the
3 outset if you don't mind.

4 MR. CASE: Sure. Go ahead.

5 MR. CONWAY: My name is Daniel R.
6 Conway, I am with the firm of Porter Wright
7 Morris & Arthur, Columbus, Ohio, 41 South High
8 Street 43215. I am counsel for
9 the Complainant, Ohio Power Company.

10 My initial comment that I wanted to
11 make before we started is that I note that there
12 was a notice of deposition served, and I believe
13 filed at the Commission, but served on counsel
14 regarding this deposition. My understanding is
15 that the deposition was arranged by the
16 agreement that counsel for the Respondent
17 reached with counsel for the witness and/or with
18 Mr. Welsh.

19 And I would just note that the
20 Village of Lexington is not a party to this
21 proceeding, and so the deposition notice method
22 for compelling attendance of witnesses in our
23 view is not available to the Respondent to
24 compel attendance of this witness. And that as

1 a result the basis on which he is attending must
2 be by the agreement reached between you and him.

3 MR. CASE: Fine.

4 MR. CONWAY: Okay.

5 Q. Sir, by whom are you employed?

6 A. Poggemeyer Design Group.

7 Q. And where is that located?

8 A. Home office is in Bowling Green,
9 Ohio.

10 Q. And what do you do for Poggemeyer?

11 A. I am a city management consultant
12 and I am on retainer to the Village of
13 Lexington.

14 Q. So you are not specifically employed
15 by the Village of Lexington?

16 A. Not presently.

17 Q. Okay. But your actual job duties
18 are what?

19 A. I am in charge of the water and
20 sewer departments, street department, parks,
21 buildings and grounds maintenance. I am
22 the zoning inspector. I am kind of a budgeting
23 and finance person. Assist with that.

24 Generally I am in charge of

1 operations of the Village during the day. We
2 have a part-time mayor, but I am full-time
3 administrator.

4 Q. And just so we are clear we are
5 talking about the Village of Lexington, Ohio;
6 correct?

7 A. That's correct, yes. I just want to
8 clarify, up until I believe it was April, first
9 of April of 2006 I was an employee of
10 the Village of Lexington. I was employed as
11 the Administrative Director.

12 Q. What led to the changeover whereby
13 that has been contracted out?

14 A. I retired for PERS purposes and was
15 employed by Poggemeyer Design Group, and through
16 contractual arrangement back here working as a
17 consultant.

18 Q. Basically are you doing the same
19 duties that you did before?

20 A. Essentially, yes.

21 Q. All right. And I know you are eager
22 to answer the question, but it works a little
23 better if I am able to complete my question. You
24 have anticipated what I am going to say,

1 correctly, but nonetheless I should get my
2 question out. Okay?

3 A. Go ahead.

4 Q. So, how long have you been
5 performing the duties that you are performing
6 now either as an employee or on a contract
7 basis?

8 A. Approximately 32 years.

9 Q. That takes us back to --

10 A. 1975. January of '75.

11 Q. What was your educational
12 background?

13 A. I have a degree in City Planning
14 from Michigan State University.

15 Q. Has your business career for the
16 most part then been involved with the Village of
17 Lexington?

18 A. I was the chief land use planner at
19 the Richland County Regional Planning Commission
20 for four years prior to assuming this position,
21 then I have held this position since then.
22 Since 1975.

23 Q. How did you get the job? Are you
24 appointed by Council or the Mayor or how?

1 A. Appointed by the Mayor subject to
2 Council's confirmation.

3 Q. Is that done on a periodic basis
4 like annually, or is it --

5 A. No. Until --

6 Q. You serve at the pleasure?

7 A. Serve at the pleasure.

8 Q. And I assume you served at the
9 pleasure probably of several mayors during that
10 time?

11 A. Three.

12 Q. Okay. And have your duties
13 and responsibilities throughout the time period
14 from 1975 until present been pretty much the
15 same?

16 A. Essentially.

17 Q. And I take it that with that wealth
18 of experience you are generally familiar with
19 the various ordinances that govern the operation
20 of public utilities within the Village of
21 Lexington?

22 A. Yes.

23 Q. And are familiar with whatever
24 policies Lexington followed with respect to the

1 operation of public utilities within the
2 Village of Lexington?

3 A. Yes.

4 Q. All right. Let me try to go back
5 historically. We are here obviously on a case
6 involving electric service. When you got here
7 in 1975 who was providing electric service?
8 What companies within the Village at that time?

9 A. There were two companies. AEP
10 served the majority of the Village.
11 Predominantly the east end of the Village and
12 moving towards the western part of the Village.

13 And then the far western edge of the
14 Village was served by Consolidated. Well, maybe
15 at that time Morrow County Electric Co-op. I am
16 not sure what the name there was at that point
17 in time.

18 Q. You understand that at some point in
19 time Morrow Electric Cooperative I guess merged
20 with another co-op and became Consolidated
21 Electric; is that right?

22 A. Yes.

23 Q. Now, at any time has the Village of
24 Lexington actually operated its own electric

1 plant?

2 A. No.

3 Q. So, there has always been those two
4 companies from '75 until now serving within
5 the Village?

6 A. That's right.

7 Q. Anybody else on electric service?

8 A. No.

9 Q. Now, am I correct that the Village
10 of Lexington, it's pretty basic, but it's a
11 municipal corporation under the laws of
12 the State of Ohio?

13 A. Yes. We are a municipal
14 corporation. We are a chartered municipality as
15 opposed to statutory.

16 MR. CASE: Okay. And I have
17 certified copies of all of these, Dan, if you
18 want to see them, but I will just for the record
19 assume that copies will suffice. Okay?

20 MR. CONWAY: That is fine with me.
21 I am not quite sure what use you will make of
22 them.

23 MR. CASE: I am not asking you to
24 stipulate to relevance.

1 (EXHIBIT HEREBY MARKED FOR
2 IDENTIFICATION PURPOSES)

3 Q. Mr. Pscholka, I have handed you
4 what has been marked for identification purposes
5 as your Deposition Exhibit 1. Is this the
6 charter that you spoke of that has been adopted
7 by the Village of Lexington, Ohio?

8 A. Yes. I believe it is.

9 Q. And it appears to have been by the
10 voters on November 2, 1976?

11 A. That's correct.

12 Q. All right. Now, just out of
13 curiosity just thumbing through here, there is a
14 reference in Article 6 to an Administrative
15 Director. Is that you?

16 A. That is me, yes.

17 Q. So that your position actually is
18 created by the Charter?

19 A. That's correct.

20 Q. And that looking at page 13 where it
21 is talking about the duties in Section C, and if
22 I may summarize what it talks about here, your
23 duties include --

24 MR. CONWAY: This is page 13?

1 MR. CASE: Right. Speaking of
2 Section 6.01.

3 Q. C 1 there indicates that your duties
4 include to manage and supervise the operation of
5 all municipal utilities, and that includes the
6 generation and/or distribution of electrical
7 energy. Right?

8 A. That is what it says, yes. But we
9 do not have an electric plant or electric
10 utility operation.

11 Q. Okay. Was that ever considered at
12 any time by the Village?

13 A. Not since I have been with the
14 Village, no.

15 Q. Now, there is also a reference in
16 that particular portion of the Charter talking
17 about you have the authority to make bylaws,
18 regulations, and speaking of you I am saying in
19 your context of your role as Administrative
20 Director, to make bylaws and regulations for the
21 efficient management and protection of all
22 municipal utilities. I assume then there are no
23 such regulations that have been promulgated by
24 you?

1 A. Not with regard to electric. With
2 regard to water and sanitary sewer, yes, there
3 are. And those are included in our Code of
4 Ordinances book. And I am not sure they are
5 relevant, but they are available for anyone to
6 look at.

7 Q. Lexington does have its own water
8 department?

9 A. Yes. We have our own water
10 department and our own sewer department.

11 Q. And you run those as well as
12 whatever involvement the Village needs to have
13 with respect to electric service, you are in
14 charge of that also? Understanding you don't
15 run --

16 A. Understand we are not an electric
17 provider. I am not sure what my extent of
18 involvement is, but --

19 Q. Well, there has been some
20 involvement, has there not, from the Village's
21 standpoint in franchising electric companies to
22 operate within the Village?

23 A. Right, but those franchises were
24 approved by the Village Council, not by me.

1 Q. I understand. Did you ever have any
2 involvement in it? In their passage?

3 A. Not other than probably some
4 conveying some documents.

5 Q. There have been actually a couple
6 more recent in -- well, at least with respect to
7 the co-op in '04; has there not?

8 A. Yes. There was a new ordinance of a
9 new franchise in '04.

10 Q. All right.

11 (EXHIBIT HEREBY MARKED FOR
12 IDENTIFICATION PURPOSES)

13 Q. I have handed you what has been
14 marked as your Deposition Exhibit 2, Mr.
15 Pscholka. Is this the most recent ordinance,
16 04-66, that grants a franchise to Consolidated
17 Electric to operate within the Village of
18 Lexington?

19 A. Yes.

20 Q. Now, let me just try to understand a
21 little bit more. Did you have any involvement
22 whatsoever in the events leading up to Council's
23 consideration of this ordinance?

24 A. I had communications with Richard

1 Miller who was representing Consolidated at that
2 time about Consolidate's wish to update our
3 existing franchise with Consolidated Electric.
4 And I brought with me some communications,
5 e-mails, from Mr. Miller regarding model
6 franchises and that type of thing.

7 Q. Could I take a look at those? I did
8 ask you to bring those and I will just spend a
9 moment on that. Thanks.

10 I will have you maybe identify these
11 in a minute, but in your communications with Mr.
12 Miller did he express to you what he felt might
13 be some limitations with respect to the existing
14 ordinance that Consolidated was operating under?

15 A. I knew there was some additional
16 language that Consolidated would like to see
17 incorporated in their new franchise agreement.
18 And I am not exactly sure to what benefit that
19 was to Consolidated, but --

20 Q. What was your understanding what
21 they were trying to accomplish?

22 A. I really wasn't sure to be honest
23 with you. I was just advised by them that they
24 wished to update, upgrade their franchise, I

1 asked them to provide some information and some
2 copies of some draft franchises. Most of that
3 information was transmitted to Mr. Welsh for his
4 review.

5 And then the actual franchise
6 ordinance, or ordinance adopting the franchise,
7 was prepared by Mr. Welsh.

8 Q. Can you tell me with respect to
9 Ordinance 04-66, what material changes are there
10 as a practical matter from the ordinance that
11 was previously in place?

12 A. I really cannot tell you that, sir.
13 I don't know.

14 Q. All right. Would you agree that it
15 was the purpose of the Village to basically
16 eliminate any territorial restrictions within
17 the Village that there might be with respect to
18 Consolidated serving customers within the
19 Village?

20 MR. CONWAY: Objection.

21 Q. You can answer.

22 A. That was not my understanding, no.

23 Q. But you would agree that there is
24 nothing in this present franchise which would

1 preclude Consolidated from serving wherever it
2 wants within the Village?

3 MR. CONWAY: Objection. It calls
4 for a legal conclusion. He is not a lawyer.

5 Q. From your perspective --

6 MR. CONWAY: The one ordinance
7 speaks for itself as you pointed out in your
8 answer.

9 A. Give me a minute and let me re-read
10 the ordinance. I don't see any language in here
11 that pertains to particular service areas or
12 service territories or whatever.

13 Q. And some franchise ordinances do.
14 You have seen those; right?

15 A. The only franchise ordinances I am
16 familiar with are the ones that we have adopted
17 here.

18 Q. All right.

19 A. I can't speak to that.

20 (EXHIBIT MARKED FOR PURPOSES OF
21 IDENTIFICATION)

22 Q. Mr. Pscholka, I have handed you
23 what is marked as Deposition Exhibit 3.

24 MR. CONWAY: Would you mind if I

1 take a look at that before --

2 MR. CASE: I am sorry. That is the
3 only copy. We have to make copies of that.

4 Q. Exhibit 3 is something you produced
5 for me this morning that Mr. Miller corresponded
6 with you on, Mr. Pscholka; is that right?

7 A. Yes, that's correct.

8 Q. Directing your attention to the --
9 I will give you a second to look at it. I am
10 really only going to be asking you about
11 the first page.

12 A. Just a second. Let me take a minute
13 to read it.

14 MR. CONWAY: This is an e-mail from
15 Mr. Miller to Mr. Pscholka?

16 MR. CASE: It appears to be.

17 THE WITNESS: Yes.

18 A. Okay.

19 Q. Directing your attention to the
20 first page of that document, Mr. Miller on
21 behalf of the co-op is at least advising you
22 that he thought that it would be good to permit
23 with respect to new developments in the
24 subdivisions choice; correct? The Village

1 could choose actually is what I think it says.

2 A. Well, I am looking at page 2 of
3 that ordinance and it indicates that it's
4 non-exclusive franchise, and so it would be
5 non-exclusive. It recognizes that there are
6 more franchises.

7 So I guess from that standpoint we
8 understood that one or the other of the utility
9 companies may provide service. It doesn't
10 indicate which one. There is no service
11 territories or anything like that.

12 Q. Well, and even beyond that there is
13 some suggestion, is there not, at least from Mr.
14 Miller's perspective, you understood Mr. Miller
15 to be saying he thought it would be a good idea
16 that there been some element of choice involved
17 with respect to which electric supplier was
18 going to service a particular subdivision;
19 right?

20 A. That was Mr. Miller's perspective,
21 yes.

22 Q. And so you understood that was at
23 least the impact that the adoption of this
24 ordinance might have; right?

1 A. Yes. By having two non-exclusive
2 franchises we would have some choice.

3 Q. And from the standpoint of the
4 Village did you view that as a positive, good
5 thing?

6 A. Personally, I think any time that a
7 developer or potential customers have some
8 choice, they have more flexibility, they have
9 more options, it's good for the developer, it's
10 good for all the consumers.

11 Q. And you say personally, and I
12 understand that, you know, we have a piece of
13 legislation that you didn't vote on.

14 A. I did not.

15 Q. But I am asking you from the
16 standpoint of the representative of the Village
17 and the one most familiar with the municipal
18 operations and ordinances and so forth, is that
19 basically the policy that is reflected in
20 ordinance 04-66 as you understand it?

21 A. Yes. As I understand it is, yes.

22 Q. And let me go a step further. And
23 you were talking about subdivisions and
24 developments. And I will get to the Woodside

1 subdivision in a moment because that is
2 the specific one that is the subject of this
3 complaint.

4 A. I understand.

5 Q. But I want to ask you a couple of
6 general questions. I don't know that much about
7 the Village of Lexington. I take it there is a
8 desire on the part of the Village for growth.

9 A. Yes.

10 Q. And preferably growth within the
11 Village as opposed to outside the village when
12 you have a choice; right?

13 A. Yes. Of course, we like to see
14 growth on the fringes and hopefully we can annex
15 that or something like that, yes.

16 Q. And just so I understand, and from
17 your role as the city planner why is that good?

18 A. We particularly are interested in
19 growing commercially and industrially and we
20 need to do that from a tax base standpoint.
21 We never had a problem with growth
22 residentially. The residential growth rate has
23 been pretty steady probably largely as a result
24 of the school district here having an excellent

1 school rating, and people are attracted to this
2 area for that reason, as well as the good
3 community services that we provide. But we have
4 been rather top heavy in residential development
5 and a little underdeveloped commercially and
6 industrially.

7 Q. Understanding that, and from what I
8 understand, little I understand how
9 municipalities do business, they are always
10 looking for commercial development to help pay
11 the costs of services.

12 A. Right.

13 Q. But you are not saying that you are
14 in any way discouraging residential development.

15 A. No. We don't attempt to discourage
16 residential development. It happens whether we
17 go out and encourage it or not.

18 Q. And presumably the more development
19 you have within the community the more goods and
20 services, the betterment of the community will
21 be served thereby; right?

22 A. Yes.

23 Q. So, with respect, and let me be
24 specific for a moment, like with the Woodside

1 subdivision that was something you welcomed
2 being within the Village of Lexington as opposed
3 to being outside the Village of Lexington. Fair
4 enough?

5 A. Yes.

6 Q. And is it sometimes a concern of
7 yours, or was it a concern of the Village's,
8 that if developers such as the developer at
9 Woodside subdivision, as an example, but again I
10 am speaking generally, if they were not
11 satisfied with the particular electric supplier
12 whose certified territory it was in that they
13 might go somewhere else and not even locate
14 within the Village. Was that a concern?

15 A. Not in this particular case.

16 Q. But in the adoption of the ordinance
17 that was part of the thinking; right?

18 A. It was not part of my thought
19 process, but it might have been part of
20 Council's. I can't speak on behalf of the
21 Council.

22 Q. Well, I am just getting back to what
23 you said at the outset that you as a matter of
24 economic development I think you said --

1 A. As a matter of economic development
2 we need to see more commercial and industrial
3 development. I guess if it was a matter of
4 whether we were going to lose a particular
5 industry or business or whatever as a result of
6 an electric service issue we would try and work
7 first with the company that surrounded the area
8 with service and try and resolve those issues.
9 And we have done that on at least one past
10 occasion that sticks very freshly in my mind.
11 That is Next Generation Films.

12 We would go that route first and see
13 if we can address those issues. If not I guess
14 our next choice would be to see the best
15 solution to the problem. If that means service
16 from another utility so be it.

17 Q. All right. I think I understand
18 what you are saying. Let me summarize what I
19 think you just told me. Tell me if I am right.

20 From the standpoint of the Village
21 the purpose behind permitting we will say choice
22 that was caused by the adoption of the ordinance
23 04-66 was primarily to encourage commercial and
24 industrial development because you thought it

1 would give some options and tend to make those
2 developers more likely to locate within the
3 Village of Lexington. But in passing --

4 MR. CONWAY: I am going to object if
5 this is going to be a long speech with has lots
6 of different components and at the end you say
7 do you agree with this because it's a compound
8 question. And it's hard to tell which parts you
9 might be getting the response. So I will object
10 to the confusion that I can predict that is
11 going to occur here. But go ahead.

12 MR. CASE: Well, why don't I
13 rephrase the question. I will rephrase it
14 because I wasn't satisfied with the way I was
15 drafting it anyway. I will do better.

16 Q. Mr. Pscholka, one of the purposes
17 behind the passage of 04-66 was to foster and
18 encourage economic development for commercial
19 and industrial growth; right?

20 A. No. I can't make that statement.
21 And the reason I can't make that statement, and
22 let me go a little further and explain, is that
23 the areas that we are focusing on for commercial
24 and economic development or predominantly on the

1 east side of the Village adjacent to our
2 industrial park to the south, along U.S. Route
3 42 to the north, and predominantly in Washington
4 Township. That area is already served by AEP.

5 I don't think we ever envisioned
6 the crossing of service areas, existing service
7 areas, when we adopted this. We were looking at
8 new unserved areas that were, you know, along
9 that fringe between the two companies' service
10 boundaries where it might be just a simple
11 logical extension of one company's facilities
12 into an area to service it. Not jumping across
13 town and picking up something that might be way
14 over on the east side of the Village totally
15 surrounded by the AEP service area.

16 Q. But you understand that the passage
17 of this ordinance might lead to customer choice
18 and competition in some circumstances?

19 A. In some circumstances, yes.

20 Q. The old ordinance 73-45, you are
21 familiar with that one?

22 A. Not really. That ordinance was in
23 place before I came with the Village. I knew it
24 existed, but I probably had never even read it

1 until the new ordinance came up.

2 Q. Well, Mr. Pecholka, as part of your
3 duties towards Council did you compare ordinance
4 73-45 with 04-66 and advise Council with respect
5 to any differences in the two?

6 A. No, I did not.

7 Q. Did you review 73-45 before Council
8 considered 04-66?

9 A. I don't recall.

10 (EXHIBIT HEREBY MARKED FOR
11 IDENTIFICATION PURPOSES)

12 Q. Handing you what has been marked as
13 Exhibit 4 to your deposition. Does this appear
14 to be the prior ordinance, the Morrow Electric
15 ordinance 73-45 which was the franchise in place
16 until the 2004 ordinance?

17 A. Yes. It appears to be that
18 ordinance that was in effect.

19 Q. Understanding that you weren't there
20 when this was adopted, would you agree with me
21 that there are some limitations in this
22 ordinance that were deleted when the '04
23 ordinance was adopted? That is to say looking
24 at the bottom of ordinance 73-45 there is a

1 reference to the fact that the grantee, meaning
2 Morrow, shall provided electric service
3 hereunder only within, and then it talks about
4 the area or areas of the Village presently being
5 developed and other such areas as may be
6 developed in the future all within areas where
7 the cooperative may provide adequate service
8 when requested and without crossing lines of
9 other utilities which are in service at the date
10 of this request, April 2, 1973.

11 And it also says any other area or
12 areas annexed to the Village after the date of
13 this ordinance any portion of which is either
14 being provided electric service by grantee at
15 the time of annexation, or which at the date of
16 this ordinance is closer to the facilities of
17 grantee than to those of any other electric
18 supplier.

19 A. Okay.

20 Q. I read that correctly; right?

21 A. Yes, you did.

22 Q. And those particular limitations of
23 the franchise were apparently not carried
24 through into the '04 ordinance. Is that fair to

1 say?

2 A. I don't see that similar language in
3 the new ordinance. That's correct.

4 Q. Okay. Now, let me make sure I
5 understand something. We are here for the
6 Woodside subdivision. I take it the Village has
7 no objection to the service which Consolidated
8 is providing currently that is the subject of
9 this Commission proceeding; is that correct?

10 A. That's correct.

11 Q. And do you understand that the
12 actual -- some of the lots that are being served
13 within the Woodside subdivision by Consolidated
14 are physically within the certified territory of
15 in this case Ohio Power Company?

16 A. I am aware that they potentially
17 were. Prior to this new ordinance going into
18 effect, 04-66, I had downloaded some maps off
19 the PUCO's website that shows service area
20 boundaries, but those maps are pretty vague when
21 you are getting into particular lot lines or
22 even like quarter section lines or things like
23 that.

24 So, in our opinion under the new

1 ordinance we had that flexibility to give to the
2 developer to take whichever company along that
3 boundary line could serve the development most
4 effectively, efficiently.

5 Q. And that would be true even if it
6 were the case that the particular lots happen to
7 fall within the certified territory of Ohio
8 Power at least in this instance?

9 A. Yes.

10 Q. It's my understanding that the
11 04-66 which we previously marked, I believe it's
12 Exhibit 2, provides for or requires acceptance
13 by the grantee before it's effective; correct?

14 A. Yes. Acceptance by Consolidated
15 Electric Co-op is what you are saying?

16 Q. Yes.

17 A. Yes.

18 Q. And to your knowledge has that been
19 accepted by the Village?

20 A. It's my understanding it was, yes.

21 Q. Okay.

22 (EXHIBIT MARKED FOR PURPOSES OF
23 IDENTIFICATION)

24 Q. I have handed you what has been

1 marked as Deposition Exhibit 5. And I know -- I
2 don't think you brought this with you today, but
3 to your knowledge is Exhibit 5 somewhere in the
4 records of the Village evidencing the acceptance
5 by --

6 A. I did not bring it with me and I
7 haven't done a records search for this document,
8 but if it was sent to us it should be somewhere
9 in our files, and we can certainly --

10 Q. In any event this is consistent with
11 what you understand the situation to be with
12 the Village's acceptance of the franchise?

13 A. Yes.

14 Q. In other words, let me put it this
15 way. If they had not accepted this you wouldn't
16 have permitted them to do what they have done?

17 A. Yes.

18 Q. All right. Because I guess -- did
19 they have to -- let me make sure I understand
20 from your perspective. Why is it that this
21 particular development would be acceptable in
22 the Village's eyes while others might not be?

23 A. Because it was right along that
24 fringe area, it was a new development in

1 unsevered areas, it was not totally across town
2 in the middle of an existing AEP service area,
3 for example. And Consolidated had significant
4 presence in the western portion of the Village
5 and served some other sections of this same
6 development, Woodside development.

7 Q. Were you aware that the developer, I
8 guess it was Mr. McCleary, was the
9 representative?

10 A. Yes.

11 Q. Favored Consolidated for the
12 service?

13 A. Yes, I am aware that he did.

14 Q. And are you aware of why he favored
15 Consolidated?

16 MR. CONWAY: I am sorry, I apologize
17 to interrupt. Could you read back the second to
18 the previous question for me?

19 (QUESTION READ)

20 A. That is Richard McCleary.

21 Q. Talking about service to the
22 Woodside subdivision.

23 A. Yes.

24 MR. CONWAY: McCleary is the

1 developer?

2 THE WITNESS: He is a partner in
3 Bailey Investments, Inc. which was
4 the developer.

5 MR. CONWAY: Okay.

6 Q. I also understand I guess he is a
7 broker in Mansfield?

8 A. He is a real estate broker, yes.

9 MR. CONWAY: I interrupted your
10 question. I am sorry.

11 MR. CASE: That is all right.
12 Mr. Welsh may know the gentleman in Mansfield.

13 MR. WELSH: I know Mr. McCleary,
14 yes.

15 Q. Do you know anything from talking to
16 Mr. McCleary with respect to any dissatisfaction
17 he may have had with respect to Ohio Power that
18 led him to choose Consolidated.

19 A. I am aware that he had been rather
20 frustrated in attempts to get commitments for
21 service and cost estimates and whatever from AEP
22 at the time. And I believe he -- I talked to
23 Mr. McCleary recently and he told me that he had
24 some e-mails and some other documentation that

1 if he was deposed he could present to you that
2 would indicate his dissatisfaction or his level
3 of dissatisfaction and why he chose
4 Consolidated.

5 Q. Were you, quite apart from Mr.
6 McCleary, were there, in that part of the town,
7 were there -- were you aware of any shall I say
8 overabundance of service complaints with respect
9 to Ohio Power's service?

10 A. I wouldn't say overabundance, but
11 there were a number of complaints about
12 reliability issues with AEP. A much greater
13 number of complaints than we had had in the
14 Consolidated Electric service area at the time.

15 Q. Were you in any way alarmed by those
16 complaints?

17 A. The Village Council and the
18 administration were concerned, and we
19 sympathized with the residents, and we had made
20 some contacts with AEP about their reliability
21 issues. And since then they have made some
22 significant improvements and upgrades to improve
23 their reliability.

24 Q. Okay. Let me ask you this. Were

1 those concerns about reliability which you were
2 hearing at that time when this development was
3 going on, were you also hearing those complaints
4 prior to the enactment of the franchise
5 ordinance 04-66?

6 A. Yes. That would have been in the
7 time frame that we were having a number of those
8 complaints.

9 Q. So, is it also fair to say that at
10 least from your standpoint as the Village's
11 administrator and in charge of enforcing the
12 policies of the Village of Lexington with
13 respect to utilities, was the frustration at
14 least at that time with reliability of service
15 of Ohio Power part of the reason why the
16 Council adopted 04-66?

17 MR. CONWAY: Objection. He has
18 already explained he doesn't speak for the
19 Council.

20 MR. CASE: From his standpoint.

21 A. That may have been in the back of
22 Council's mind. I can't speak for Council.
23 Like I said, I don't know.

24 Q. But that came up in the discussion

1 of the ordinance; didn't it?

2 A. The record of the discussion of the
3 ordinance will speak for itself. I don't know.

4 Q. Regardless of what Council may have
5 thought as far as your knowing exactly what was
6 on their mind, ordinance 04-66 would have at
7 least allowed a developer such as Bailey
8 Investments some flexibility if they were
9 dissatisfied to choose another supplier;
10 correct?

11 A. Yes, it would.

12 Q. And from your standpoint that was a
13 good thing at least in this instance?

14 A. From my standpoint, yes.

15 Q. And when we talked about the -- let
16 me make sure I understand. I know you are not a
17 lawyer, and I am not going to ask you that as a
18 lawyer, but municipalities have powers that
19 townships don't have; correct?

20 A. Yes.

21 Q. And granted by the constitution?

22 A. Yes.

23 Q. And is it your understanding that if
24 a municipality wants to it can -- it has

1 the ability under the constitution to determine
2 who is going to serve electricity within the
3 Village limits?

4 MR. CONWAY: I am going to object to
5 that question. It calls pretty clearly for a
6 legal conclusion. I am not sure of it's
7 purpose.

8 A. I would have to defer to Mr. Welsh
9 on that question. I can't answer that question.

10 Q. All right. But do you have an
11 understanding one way or the another whether or
12 not it's a legal opinion?

13 A. I know that there are some home rule
14 powers that municipalities have that townships
15 and other unincorporated areas do not have.
16 What extent that gives us more authority to
17 offer choice or override PUCO service area
18 boundaries or whatever, I can't say. I also
19 know that the Supreme Court has been kind of
20 knocking away at the home rule powers and the
21 legislature.

22 (EXHIBIT MARKED FOR PURPOSES OF
23 IDENTIFICATION)

24 Q. And am going to hand you what has

1 been marked as Exhibit 6. And if you will
2 provide a copy to Mr. Conway that would be
3 great. And ask you if you can identify this
4 document?

5 A. This is letter that was sent to
6 Brian Newton of Consolidated Electric Co-op
7 regarding service in Woodside subdivision block
8 that would be K I believe, I am not sure, at the
9 request of the developer.

10 Q. And this letter you sent to
11 Consolidated, you actually were taking some
12 action as the Administrative Director to advice
13 him that in accordance and with the ordinance
14 that you desired and requested Consolidated to
15 provide that service; correct?

16 A. Yes. That's correct.

17 Q. And who asked you to actually write
18 this letter?

19 A. It was at the request of Mr.
20 McCleary.

21 Q. And can you briefly tell us what
22 your discussions were with Mr. McCleary that led
23 to your writing of this?

24 A. Mr. McCleary had indicated to me

1 that he become frustrated with his attempts to
2 work with AEP to have service provided to this
3 area, and that Consolidated Electric had been
4 much more responsive to his contacts and were
5 willing to serve the area. And I believe, I
6 can't speak to the monetary advantages, I am
7 sure there probably were some, and based upon
8 that information he had made the decision to go
9 with -- or that he would like to see
10 Consolidated serve this area, and made that
11 request to me representing the Village.

12 Q. Now, let me make sure, I will get to
13 these maps that are attached in a minute, but I
14 kind of want to get an understanding about
15 the Woodside subdivision. I understand it has
16 been built in several phases.

17 A. Yes. I think this is like block K,
18 so you can figure out how many previous blocks
19 in the Woodside subdivision there were. And
20 these have been built from a period of time
21 probably starting around I am going to say early
22 '80s I am guessing up until the present. Maybe
23 mid '80s. I am not sure exactly.

24 Q. And by the time that you authored

1 this letter we will say, and I don't know that
2 it is dated.

3 A. It isn't dated. I noticed that.

4 Q. Do you know when it was sent out?
5 I see a March 29, '05 date at the top which is
6 apparently a fax transmittal. Would that be
7 around the time period?

8 A. Yes. That would have been
9 approximately the time frame. That is what I
10 have at the top of my copies 3-28-05.

11 Q. And I guess you are saying this is
12 area K are you saying, or phase --

13 A. I think it's block K. I have to go
14 back to the plat map itself to verify that.

15 Q. Well, I see on the top of the map it
16 talks about Woodside block H. It looks like the
17 adjoining ones. So I am guessing you are
18 probably right that it's K, but I don't know for
19 a fact. You see J up to the right there. Your
20 recollection it's K?

21 A. Yes, I believe so.

22 Q. At the time that you wrote this
23 correspondence to Brian Newton at Consolidated
24 were there -- was any of block K developed to

1 your knowledge?

2 A. No. This was all vacant.

3 Q. And it looks like that the specific
4 request was that you provide service to the
5 remaining undeveloped lots; right?

6 A. Yes. That's correct.

7 Q. But on the Exhibit A which is
8 attached it looks like some lots have AEP on
9 them, and others have CE which I assume is
10 Consolidated Electric; right?

11 A. That's correct.

12 Q. Now, was it your intention in
13 the way -- were those marks put in by, or do you
14 know who put those in?

15 A. I don't believe those are my marks.
16 That doesn't look like my handwriting.

17 Q. What was your understanding as to
18 what distinction, if any, there was between the
19 lots that are marked AEP and those marked CE, if
20 you know?

21 A. I guess I didn't realize when I
22 wrote the letter that those lots were served by
23 AEP.

24 Q. Did you -- well --

1 A. It's been so long ago I can't recall
2 for sure. But then there is a map on the second
3 page attachment to that that is the remaining --
4 the next block of the Woodside subdivision which
5 had approved preliminary plans. We had not yet
6 approved the final plat. That would be I
7 believe block L.

8 Q. Where is that on this third page of
9 this exhibit?

10 A. That would be to the east continuing
11 this direction (indicating) here and going out
12 Fox Road which is to the north here.

13 Q. That is not shown on this map?

14 A. That is not shown.

15 Q. Why don't you just so we will have
16 an understanding maybe put a mark where block L
17 will be.

18 A. Okay.

19 Q. That is being developed currently,
20 or it hasn't been approved yet?

21 A. The final approval has not been
22 granted on the plat. The preliminary plans were
23 approved. There has been some site work done
24 out there, some dirt moved. The final plat has

1 not been filed.

2 Q. Let me see if I understand. Does
3 the letter -- does the letter you sent to Brian
4 Newton also apply to --

5 A. Yes. It also includes block L.

6 Q. Block L?

7 A. Yes.

8 Q. Just so I know, and I am not sure I
9 am aware of this, is block L within the, to your
10 knowledge, within the Ohio Power certified
11 territory?

12 A. It appears to be, yes.

13 Q. Okay. And so the third page of this
14 talks about Woodside future phases, and it looks
15 like --

16 A. Block L is the final phase. That is
17 the last. That will be the final.

18 Q. But is it shown on this? Or not?
19 Let me see where you marked it.

20 A. I marked here block L (indicating).
21 Block L fits here. Looking like this. The
22 other direction (indicating). If you were to
23 take this map and this map (indicating), here is
24 Woodside Boulevard, this is Highridge. There is

1 a new street that goes out to Fox Road up here
2 (indicating), and it comes over here and there
3 is one more cul-de-sac that comes back in this
4 direction here (indicating) south of Highridge.

5 Q. Well, just so I understand it, your
6 belief is that the letter that you sent Mr.
7 Newton on or about March 29, 2005 is broad
8 enough to include in its scope what you are
9 referring to as block L. Is that fair?

10 A. Yes. The remaining final block of
11 Woodside subdivision.

12 Q. Do you know how many lots are in
13 that block?

14 A. It looks like about 32 or 33 lots.

15 Q. There has been no actual
16 construction there yet?

17 A. No, there has not.

18 Q. Are there any facilities in place
19 there yet to your knowledge?

20 A. There are some storm facilities in
21 place. I don't believe any water or sewer.

22 Q. Or electric?

23 A. No electric that I know of no.

24 Q. Are you familiar with what

1 Consolidated had to do from a purely engineering
2 standpoint to access the lots that are at issue
3 in this matter before the Commission, which I
4 think are for the most part shown on the second
5 page of Exhibit 6?

6 MR. CONWAY: And you are referring
7 to the four that have service and the fifth lot
8 that was offered service?

9 MR. CASE: Right.

10 MR. CONWAY: In our complaint?

11 MR. CASE: Right.

12 A. Since Consolidated serves the area
13 immediately to the north of those lots I would
14 have thought it would have been a relatively
15 simple extension of utilities right up that rear
16 property line. I believe these are all served
17 by rear lot utilities.

18 Q. Okay. You mentioned that apparently
19 AEP is serving lots on the other side of that
20 cul-de-sac as shown here, but you are not -- I
21 take it you are a little unclear as to how that
22 came to be, or what might have been in place at
23 that point or --

24 A. Yes. I am a little uncertain as to

1 that. I guess I didn't even realize that that
2 was AEP's service area.

3 Q. Well, I have given you my copy.
4 Do you have your own copy of this?

5 A. I have this, yes.

6 Q. Is yours marked with AEP and CE just
7 like this one is?

8 A. It is, yes.

9 Q. So presumably when you got this
10 exhibit it had the same markings; right?

11 A. Presumably, but I am not sure where
12 this came from because this does not look like
13 my writing. This might have been Mr. McCleary's
14 writing. It could have been someone from
15 Consolidated. I am not sure. It doesn't appear
16 to be my handwriting.

17 Q. So, I take it you are a little bit
18 in the dark as to why it is that AEP is serving
19 the lots where their name is on there?

20 A. Yes. I am not quite certain how
21 that happened. I presumed that everything in
22 that area up there was Consolidated Electric.

23 Q. Do you know whether or not they
24 might have had some pad mounted transformers on

1 those lots already?

2 A. I don't know that.

3 Q. Do you know where their
4 distribution line was? Did you ever go out and
5 look?

6 A. No.

7 Q. It sounds like your primary concern
8 here was in trying to satisfy the needs of a
9 developer who was going to be selling homes
10 within the subdivision?

11 A. That was our primary concern, yes.
12 We were abiding by his desires to be served by
13 Consolidated.

14 Q. Just so I understand, because I am,
15 as you said yourself the ordinances say what
16 they say and we can try to interpret those, but
17 I am kind of interested in the limits of what
18 the Village's policy is here. I think you have
19 indicated that there could be occasions where
20 the Village would, notwithstanding what
21 the franchise may stay, and we can agree on what
22 that -- or disagree what that says, but you are
23 saying there might be instances where you would
24 find it objectionable if Consolidated were to

1 cross a bunch of lines of Ohio Power and run a
2 line for miles.

3 A. Yes. That was never our intention
4 to allow areas being served doubly crossing
5 lines or --

6 Q. But if a developer wants
7 Consolidated how are you going to go about, if
8 this comes up in the future, I realize this is
9 hypothetical, how are you going to deal with
10 that? If like Mr. McCleary was to come in, and
11 we will say it's a mile away just for fun, right
12 smack in the middle of Ohio Power's territory,
13 and I understand that is a different situation,
14 but how are you going to go about determining in
15 that particular case whether they have the
16 rights to provide service or not?

17 MR. CONWAY: Objection. I don't
18 think he explained he is the one who determines
19 who has the right or doesn't have the right.

20 Q. Well, I don't know. You did play
21 some role with respect to Consolidated providing
22 service in this case. You wrote a letter;
23 correct?

24 A. Yes.

1 Q. So I take it that had you found this
2 to be against the policies of the Village or
3 against the ordinances in some way you may have
4 said no. I don't know.

5 A. I think we would have to look at
6 those on a case-by-case basis how much effort
7 was made to obtain adequate service or timely
8 service from the other company, whether there
9 was just total disregard by the other company to
10 provide the service, whether there were any
11 issues that could be worked out.

12 I think the Village would have to
13 look long and hard before we would make a
14 recommendation that an area be served in the
15 midst of another company's service.

16 Q. So what you are saying is the
17 Village is, I guess the right way to say it is,
18 reserving some rights here to retain some
19 flexibility to decide those matters as they come
20 up?

21 MR. CONWAY: Objection. Same
22 objection as to this witness' ability to speak
23 for the Village.

24 Q. That is your policy at least as you

1 see it?

2 A. Can I confer with my attorney for a
3 minute?

4 Q. I don't have a problem with that if
5 you really need to. I mean, I am just trying to
6 find out what your general policy would be.

7 (RECESS TAKEN)

8 THE WITNESS: Could you repeat the
9 question, please?

10 (QUESTION READ)

11 A. Having a non-exclusive franchise and
12 reserving some flexibility which we apparently
13 have. I guess we would leave the decision up to
14 the developer and defer to the developer's
15 wishes, but only if it's in an area that is
16 unserved, not where we are taking other people's
17 customers, or existing customers. And there are
18 economics, of course, which are going to come
19 into this thing as to how feasible is it for
20 this utility company to run a line way over here
21 to serve this particular area.

22 So, from that basis I think we are
23 really talking about those fringe areas like in
24 Woodside subdivision, and where it became

1 probably more economically feasible, or just as
2 economically feasible for Consolidated to serve
3 the area as AEP. I don't see the same scenario
4 in this island over here in the middle of AEP's
5 service territory. But that is not to say it
6 couldn't happen.

7 Q. I understand.

8 A. Like I say --

9 Q. And I am not trying to pin you down
10 too much. Really I am just trying to get
11 through how this is going to work in the future.

12 A. Yes.

13 (EXHIBIT MARKED FOR PURPOSES OF
14 IDENTIFICATION)

15 Q. Mr. Pscholka, I have handed you
16 your Deposition Exhibit 7. I just wanted to get
17 this in the record. Is ordinance 69-21 the
18 ordinance by which Ohio Power has been granted
19 franchise to operate within the Village of
20 Lexington?

21 A. I believe so. I am not aware that
22 there has been a more recent ordinance adopted.

23 Q. And actually that too is a
24 non-exclusive franchise; is it not?

1 A. It was my understanding that it was,
2 yes. And at the bottom of the page it says "The
3 rights, privileges and franchise hereby granted
4 shall not be construed to be exclusive." So
5 that leads me to believe that is a non-exclusive
6 franchise.

7 Q. And it provides further that
8 Lexington reserves the power to grant similar
9 rights and privileges and franchises to other
10 companies; correct?

11 A. That's correct.

12 Q. So, just so we are clear on that,
13 you don't view that anything that the Council
14 has done with respect to passage of ordinance
15 04-66 to be in any way in dirigation of Ohio
16 Power's franchise rights under ordinance 69-21;
17 correct?

18 A. That is correct.

19 MR. CASE: I believe that is all
20 the questions I have, Dan. Thank you.

21 MR. CONWAY: Can we just take a
22 break? I assume you are turning it over to me.

23 MR. CASE: Yes.

24 MR. CONWAY: Can we take a brief

1 break?

2 MR. CASE: Sure.

3 (RECESS TAKEN)

4 MR. CONWAY: Mr. Pscholka, I have
5 no questions for you today. I would note that
6 with regard to the documents that Mr. Case asked
7 you questions about, we are not agreeing to the
8 relevance of the documents.

9 And particularly I would note
10 objection to the admissibility of 3, 6, and 5
11 based on this witness' testimony. And also I
12 object to the relevance. But there is no
13 foundation for the admission of those documents
14 at this point.

15 The other ones that -- the
16 ordinances and the charter, assuming that they
17 are authentic, which I don't have any doubt that
18 they are, and that they are relevant, then at
19 the hearing I wouldn't objection to their
20 admission. But, the other documents I would.

21 With that I am done. Thank you very
22 much, Mr. Pscholka.

23 MR. CASE: Let me just have
24 the exhibits so I know exactly which ones you

1 are speaking of. Go off the record.

2 (DISCUSSION OFF THE RECORD)

3 - - -

4 (At 11:45, A.M. the deposition was
5 concluded)

6 - - -

1 State of Ohio :
2 County of Richland : SS:

3 I, Charles Pscholka, do hereby certify
4 that I have read the foregoing transcript of my
5 deposition given on January 5, 2007; that
6 together with the correction page attached
7 hereto noting changes in form or substance, if
8 any, it is true and correct.

9 Charles F. Pscholka
10 Charles Pscholka

11 I do hereby certify that the foregoing
12 transcript of the deposition of Charles Pscholka
13 was submitted to the witness for reading and
14 signing; that after he had stated to the
15 undersigned Notary Public that he had read and
16 examined his deposition, he signed the same in
17 my presence on the 16th day of January,
18 2007.

19 Brenda J. Wilson
20 Notary Public

21 My commission expires
22 June 4, 2008.



CERTIFICATE

1 State of Ohio :
2 : SS:
3 County of Franklin :

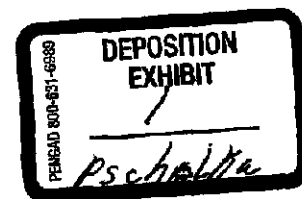
4 I, Michael O. Spencer, Notary Public in
5 and for the State of Ohio, duly commissioned and
6 qualified, certify that the within named Charles
7 Pscholka was by me duly sworn or affirmed to
8 testify to the whole truth in the cause
9 aforesaid; that the testimony was taken down by
10 me in stenotypy in the presence of said witness,
11 afterwards transcribed upon a computer; that the
12 foregoing is a true and correct transcript of
13 the testimony given by said witness taken at the
14 time and place in the foregoing caption
15 specified.

16 I certify that I am not a relative,
17 employee, or attorney of any of the parties
18 hereto, or of any attorney or counsel employed
19 by the parties, or financially interested in the
20 action.

21 IN WITNESS WHEREOF, I have hereunto set
22 my hand and affixed my seal of office at
23 Columbus, Ohio, on this 11th day of January,
24 2007.

Michael O. Spencer
Michael O. Spencer, Notary Public
in and for the State of Ohio and
Registered Professional Reporter.

My commission expires
July 28, 2008



CHARTER OF THE MUNICIPALITY OF LEXINGTON, OHIO

EDITOR'S NOTE: The Lexington Charter was approved by the voters on November 2, 1976. Dates appearing in parentheses following a section heading indicate that the section was subsequently amended, enacted or repealed on the date given.

Preamble

Article I: Name; Boundaries; Form of Government

- 1.01 Name and boundary.
- 1.02 Form of government.

Article II: Corporate Powers

- 2.01 Powers granted.
- 2.02 Exercise of powers.
- 2.03 Construction of powers.
- 2.04 Intergovernmental cooperation.

Article III: Council

- 3.01 Powers of Council.
- 3.02 Number, term, and qualifications.
- 3.03 Council organization and rules.
- 3.04 President Pro Tempore.
- 3.05 Clerk of Council.
- 3.06 Council meetings.
- 3.07 Salaries of elected officials.
- 3.08 Council vacancies.

Article IV: Legislative Procedure

- 4.01 Form of action by Council.
- 4.02 Introduction of ordinances and resolutions.
- 4.03 Form of ordinances and resolutions.
- 4.04 Reading ordinances and resolutions. (11-8-83)
- 4.05 Vote required for passage.
- 4.06 Content of emergency legislation.
- 4.07 Effective date of legislation.
- 4.08 Authentication.
- 4.09 Recording legislation.
- 4.10 Amendment of ordinances and resolutions. (11-8-83)
- 4.11 Zoning measure. (11-3-83)
- 4.12 Adoption of codes by reference.
- 4.13 Codification of ordinances and resolutions.
- 4.14 Publication of ordinances and resolutions.

Article V: The Mayor

- 5.01 Election, term and qualifications.
- 5.02 Powers and duties.
- 5.03 Vacancy, temporary absence or disability.

Article VI: Administrative Departments

- 6.01 Administrative Director. (11-2-99)
- 6.02 Law Department.
- 6.03 Finance Department.
- 6.04 Police Department. (11-7-95)
- 6.05 Fire Department.
- 6.06 Municipal Engineer.
- 6.07 Other administrative departments.
- 6.08 Acting department heads.

Article VII: Boards and Commissions

- 7.01 Planning Commission. (11-5-85; 11-4-86)
- 7.02 (Reserved).
- 7.03 Civil Service. (11-8-83)
- 7.04 Park and Recreation Board. (11-5-85; 11-4-03)
- 7.05 Charter Review Commission. (11-2-82; 11-2-93)
- 7.06 Deposit and Investment Board.
- 7.07 Income Tax Board of Review.
- 7.08 Cemetery Board.
- 7.09 Other boards and commissions.
- 7.10 Organization - vacancies.
- 7.11 Transition to Charter form.

Article VIII: Nominations, Elections, Initiative, Referendum and Recall

- 8.01 Nominations and elections.
- 8.02 Initiative and referendum.
- 8.03 Recall.

Article IX: Finance, Taxation and Debt

- 9.01 General.
- 9.02 Purchasing procedure. (11-7-89; 11-4-03)

Article X: General Provisions

- 10.01 Conflicts of interest, ethics, campaign financing.
- 10.02 Removal of elected officials, members of boards and commissions.
- 10.03 Succession.
- 10.04 Effect of Charter on existing laws and rights.
- 10.05 Retirement systems.
- 10.06 Amendment or repeal of Charter.
- 10.07 Effect of partial invalidity.

Article XI: Transitional Provisions

- 11.01 Effective date of Charter.
- 11.02 Continuance of present officials - abolition of offices.
- 11.03 Continuance of present employees.

**CHARTER OF THE MUNICIPALITY OF
LEXINGTON, OHIO**

PREAMBLE

In order that we may have the benefits of municipal home rule and exercise all of the powers of local self-government conferred under the Constitution and Statutes of the State of Ohio, We, the citizens of the Municipality of Lexington, in the County of Richland and State of Ohio, do hereby adopt this Charter for our municipality.

**ARTICLE I
NAME; BOUNDARIES; FORM OF GOVERNMENT**

SECTION 1.01. NAME AND BOUNDARY.

The municipal corporation existing as the Village of Lexington under the general statutes of the State of Ohio shall continue to be a body politic and corporate under the same name under this Charter. The municipality shall have the same boundaries that exist on the effective date of this Charter, with power and authority to change its boundaries and annex territory in the manner authorized by the laws of Ohio.

SECTION 1.02. FORM OF GOVERNMENT.

The municipal government provided for by this Charter shall be known as the "Mayor-Council-Administrative Director Plan."

**ARTICLE II
CORPORATE POWERS**

SECTION 2.01. POWERS GRANTED.

The municipality shall have all the powers that may now or hereafter lawfully be possessed or exercised by municipal corporations under the Constitution and laws of Ohio. Title to all real property shall be taken in the name of the municipality.

SECTION 2.02. EXERCISE OF POWERS.

All powers shall be exercised in the manner prescribed in this Charter, or if not so prescribed, in the manner provided by ordinance or resolution of Council. When not prescribed in this Charter or by ordinance or resolution, then the powers shall be exercised in the manner provided by the laws of Ohio until Council provides a different manner of exercising powers.

SECTION 2.03. CONSTRUCTION OF POWERS.

The powers of the municipality under this Charter shall be construed liberally in favor of the municipality, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general powers stated in this Article.

SECTION 2.04. INTERGOVERNMENTAL COOPERATION.

(A) In carrying out any lawful function or power of the municipality, the Council, may, by a majority vote of its members, authorize the execution of contracts or in any other manner provide for cooperation or joint action, between the municipality and:

- (1) Political subdivisions, special districts, instrumentalities, or other units of government of the State of Ohio or other states.
- (2) The State of Ohio, its officers, departments, divisions, instrumentalities or other units or agencies.
- (3) Other states, their officers, departments, divisions, instrumentalities or other units or agencies.
- (4) The federal government, its officers, departments, divisions, instrumentalities or other units or agencies.
- (5) Councils of governments or other instrumentalities consisting of other political subdivisions, special districts, instrumentalities or other governmental units or agencies allowed under the laws of Ohio, other states or the federal government.
- (6) Persons, corporations whether for profit or nonprofit, firms and other entities; unless such contracts, cooperation or joint actions are prohibited by the Constitution of the State of Ohio.

(B) The powers granted by this section shall be liberally construed to authorize intergovernmental cooperation, but shall not authorize the avoidance of the provisions of this Charter concerning taxation or initiative or referendum.

**ARTICLE III
COUNCIL****SECTION 3.01. POWERS OF COUNCIL.**

All legislative power of the municipality shall be vested in the Council, except as otherwise provided by this Charter and the Constitution of the State of Ohio. Without limitation of the foregoing, the Council shall have and possess the following powers:

- (1) The power to levy taxes and incur debts subject to the limitations imposed thereon by this Charter.
- (2) The power to adopt and to provide for the enforcement of local police, sanitary and other similar regulations as are not in conflict with general laws.
- (3) The power to provide for the exercise of all powers of local self-government granted to the municipality by the Constitution of the State of Ohio in a manner not inconsistent with this Charter or the Constitution of the State of Ohio.

- (4) The power to fix the number of officers and employees in the various offices, departments, divisions, bureaus, boards, and commissions of the municipality and to fix the rate of their compensation, hours of work, and to provide such other fringe benefits and conditions of employment as deemed proper by the Council.
- (5) The power to require such bonds as in the opinion of the Council are necessary for the faithful discharge of the duties of the officers and employees of the municipality. The premium for said bonds shall be paid by the municipality.
- (6) The power to create, combine, change and abolish other offices, departments, divisions, bureaus, boards, and commissions. The power herein expressed in this sub-section shall be exercised by ordinance or resolution. The Council shall not abolish any office created by this Charter nor shall the Council abolish, merge, or combine the divisions of police and fire into one administrative unit.
- (7) The power to establish, by ordinance or resolution, the rates or charges made of consumers of all municipal utilities and services.
- (8) The power to acquire and to sell or otherwise convey interests in real property; and to lease, as lessor or lessee, or otherwise grant or receive interests in real property.
- (9) The power to provide for an independent audit of the accounts and records of the municipality, which may be in addition to audits by state offices and agencies as may be required under the general laws of Ohio.
- (10) To exercise all other powers granted to the Council by this Charter and by the Constitution and laws of the State of Ohio.

SECTION 3.02. NUMBER, TERM, AND QUALIFICATIONS.

(A) The Council shall consist of seven members to be elected from the municipality at large, to serve overlapping four (4) year terms of office. Members of Council shall take office on the first day of January of the year following their election.

(B) The two (2) persons elected as members of the Council at the election held in November, 1975, or any successor thereto, under the general statutory plan of government for villages shall be members of the Council under this Charter until January 1, 1980, and they shall exercise all powers, duties and functions of Council members under this Charter. At the regular municipal election to be held in 1977 four (4) members of Council shall be elected for four (4) year terms of office and one (1) member of Council shall be elected for a two (2) year term of office. At the regular municipal election to be held in 1979 three (3) members of Council shall be elected for four (4) year terms of office.

(C) Members of Council shall have been qualified electors of the municipality for at least eighteen (18) months prior to taking office and during their term of office. Except as otherwise provided under this Charter or the general laws of Ohio, members of Council shall not hold any other public office with any other unit of government; except office in a political party, notary public, service in the national guard or the armed forces of the United States. Members of Council may be officers or members in a volunteer fire department, but they may receive no additional compensation for service in the department. Except as authorized under this Charter or the general laws of Ohio, no member of Council shall hold any other office or employment with the municipality during the term for which he was elected to the Council, and no former Council member shall hold any compensated appointive office or employment with the municipality until one year after the expiration of the term for which he was elected or appointed to the Council.

SECTION 3.03. COUNCIL ORGANIZATION AND RULES.

The Council shall be a continuing body, but shall meet in the Council Chamber at its first meeting in January of each year for the purpose of organization. Council shall adopt, by majority vote of its members, its own rules which shall not conflict with this Charter and which shall remain in effect until amended, changed or repealed by a majority vote of the members of Council. The rules shall go into immediate effect unless a later date is specified, and shall not be subject to initiative or referendum. The rules of Council shall provide: for the number, composition and manner of appointment of committees of Council; and such other matters as Council shall determine to be necessary for the proper functioning and government of Council.

SECTION 3.04. PRESIDENT PRO TEMPORE.

At each organizational meeting of the Council in January of each year, the Council shall elect by a majority vote of its members and from among its membership a person to serve as President Pro Tempore of the Council, to serve until the next organizational meeting of the Council. The President Pro Tempore of the Council shall have the powers, duties, and functions as provided in Section 5.03 of this Charter, and such other powers, duties and functions as may be provided by the rules of Council or by ordinance or resolution.

SECTION 3.05. CLERK OF COUNCIL.

The Council shall appoint, by a majority vote of its members, a person to serve as the Clerk of Council. The Clerk of Council shall serve at the pleasure of the Council and may be removed without cause by a majority vote of the members of Council. The Clerk of Council may hold other office or position of employment in the municipality. The Clerk of Council shall have those powers, duties and functions as are provided in this Charter, by the rules of Council or by ordinance or resolution. Included in the duties of the Clerk of Council shall be the maintenance of a record of proceedings of the Council and a record of all ordinances and resolutions adopted by the Council. The Clerk of Council shall give notice of regular and special meetings of the Council to its members and to the public as may be provided by this Charter, the rules of Council or by ordinance or resolution. The Clerk of Council shall be subject to the supervision and control of the officers of the Council.

SECTION 3.06. COUNCIL MEETINGS.

(A) The Council shall determine, by a majority vote of its members, the frequency, dates and times of regular meetings in order to properly conduct its business, but it shall hold at least one regular meeting in each month.

(B) Special meetings of the Council may be called, for any purpose, by the Mayor or any three (3) members of Council upon at least twenty-four (24) hours notice to the Mayor and each member of the Council, which notice may be served personally or left at the usual place of residence. Members of the Council and the Mayor who attend special meetings of the Council or who are present at another regular or special meeting where a special meeting is announced by the presiding officer need not receive notice of the special meeting.

(C) Any regular or special meeting of the Council may be adjourned or recessed to another time, date or place without giving the notice required in division (B) of this section.

(D) All meetings of the Council and of other Boards and Commissions of the municipality shall be held in accordance with the general laws of Ohio pertaining to requirements for open meetings of public bodies. In the event the Courts of Ohio having jurisdiction within the municipality shall determine the general laws pertaining to requirements for open meetings of public bodies do not apply to municipal corporations that have adopted a Charter under Article XVIII of the Constitution of Ohio, then the Council shall determine the requirements for open meetings of the Council and other Boards and Commissions of the municipality by ordinance or resolution.

SECTION 3.07. SALARIES OF ELECTED OFFICIALS.

The salaries of all elected officials of the municipality shall be established by Council by ordinance or resolution to be adopted no later than July 1, of each odd numbered year commencing in the year 1979. The salaries so established shall be effective for a two (2) year period beginning January 1 of the year immediately following the adoption of the ordinance or resolution establishing them and shall apply to all elected officials whether they are beginning their terms or are in mid-term. In the event Council shall fail to establish salaries as required in this section, the salaries in effect for the prior two (2) year period shall remain in effect until changed in accordance with this section. The initial salary of elected officials under this Charter shall be that salary established for each office and in effect on January 1, 1978 and if none have been established the Council first serving under this Charter shall establish such salaries within ninety (90) days.

SECTION 3.08. COUNCIL VACANCIES.

(A) A vacancy in the Council shall be filled by a majority vote of the remaining members of the Council. If the vacancy occurs subsequent to seven (7) days before the date when candidates for the office of Council member must file their nominating petitions or if two (2) years or less remain in the term of the incumbent who created the vacancy, the person elected by the Council shall serve for the unexpired term. If the vacancy occurs at least seven (7) days prior to the date when candidates for the office of Council member must file their nominating petitions and more than two (2) years remain in the term of the incumbent who created the vacancy, the person elected by the Council shall serve until a successor is elected at the next regular municipal election for the remainder of the unexpired term. The person elected for the unexpired term at the next regular municipal election shall take office on the first day of January following his election.

(B) If the Council shall fail to elect a person to fill a vacancy in the Council under division (A) of this section within thirty (30) days after the occurrence of the vacancy, its power to do so shall lapse and the Mayor shall appoint a person to serve for the time as provided in division (A) of this section.

ARTICLE IV LEGISLATIVE PROCEDURE

SECTION 4.01. FORM OF ACTION BY COUNCIL.

Action of Council shall be by ordinance, resolution or motion. Motion shall be used to conduct the business of Council, in procedural matters, for elections conducted among Council members and as otherwise provided in this Charter. All other action shall be taken by ordinance or resolution. No action of Council shall be invalidated merely because the form thereof fails to

comply with the provisions of this section.

SECTION 4.02. INTRODUCTION OF ORDINANCES AND RESOLUTIONS.

Any member of Council may introduce any ordinance or resolution, at a regular or special meeting, which shall be in written or printed form and shall contain a concise title.

SECTION 4.03. FORM OF ORDINANCES AND RESOLUTIONS.

(A) The form and style of ordinances and resolutions shall be determined by the rules of Council.

(B) Each ordinance or resolution shall contain only one (1) subject, which shall be expressed in its title; provided that appropriation ordinances may contain the various subjects, accounts, and amounts for which monies are appropriated, and that ordinances and resolutions which are codified or recodified are not subject to the limitation of containing one (1) subject.

SECTION 4.04. READING ORDINANCES AND RESOLUTIONS.

Each ordinance and resolution shall be read on two (2) separate days, unless this requirement is dispensed with by a vote of at least two-thirds (2/3) of the members of the Council. Each reading shall be by title only, unless any member of Council requests that the legislation be read in its entirety. (Amended 11-8-83)

SECTION 4.05. VOTE REQUIRED FOR PASSAGE.

(A) The vote on the question of passage of each ordinance, resolution and motion shall be taken by "yeas" and "nays" and entered on the journal, and none shall be passed without concurrence of a majority of the members of Council. Each emergency ordinance or resolution shall require the affirmative vote of at least two-thirds (2/3) of the members of Council for its enactment. If an emergency ordinance or resolution shall fail to receive the required two-thirds (2/3) affirmative vote, but receives the necessary majority for passage as nonemergency legislation, it shall become effective as nonemergency legislation.

(B) A majority vote shall mean at least four (4) members, and a two-thirds (2/3) vote shall mean at least five (5) members.

SECTION 4.06 CONTENT OF EMERGENCY LEGISLATION.

Each emergency ordinance or resolution shall determine that the ordinance or resolution is necessary for the immediate preservation of the public peace, health, safety or welfare, and shall contain a statement of the necessity for the emergency.

SECTION 4.07. EFFECTIVE DATE OF LEGISLATION.

(A) The following ordinances or resolutions shall take effect upon passage unless a later time is specified therein:

- (1) Appropriation of money.
- (2) An annual tax levy for current expenses.
- (3) Improvements petitioned for by owners of the requisite majority of the front footage or of the area of the property benefitted and to be assessed.
- (4) Submission of any question to the electorate or the determination to proceed with an election.
- (5) Approval of a revision, codification, recodification, rearrangement of ordinances.
- (6) Any emergency ordinance or resolution.

(B) All other ordinances and resolutions shall go into effect thirty (30) days after their passage by the Council.

SECTION 4.08. AUTHENTICATION.

Each ordinance and resolution shall be authenticated by the signature of the Mayor and the Clerk of Council. The failure or refusal to sign shall not invalidate an otherwise properly enacted ordinance or resolution.

SECTION 4.09. RECORDING LEGISLATION.

Each ordinance and resolution shall be recorded in a book or other record prescribed by Council. The Clerk of Council or a duly authorized representative of the Clerk shall, upon request of any person and upon the payment of a fee if established by Council, certify true copies of any ordinance or resolution, which copies shall be admissible as evidence in any court.

SECTION 4.10. AMENDMENT OF ORDINANCES AND RESOLUTIONS.

(A) Each ordinance or resolution, or section or sub-section thereof, that is revised or amended shall be set forth in its entirety in the amending ordinance or resolution; followed by the revised or amended ordinance, resolution, section or sub-section proposed to be enacted. Upon adoption, the ordinance, resolution or section or sub-section thereof subject to the revision or amendment shall be repealed and the amended or revised ordinance, resolution, section, or sub-section thereof shall be enacted. This requirement shall not prevent the amendment of an ordinance or resolution by the addition of new sections or sub-sections without setting forth the full text of the former ordinance or resolution; nor shall this section prevent repeals by implication. (Amended 11-8-83)

(B) Except in the case of a codification or recodification of ordinances and resolutions, a separate vote shall be taken on each ordinance or resolution proposed to be amended or repealed.

(C) Ordinances and resolutions which have been introduced and have received their first reading, or their first and second reading, but have not been voted on as to passage, may be amended or revised by a majority vote of the members of Council without requiring additional readings.

SECTION 4.11. ZONING MEASURE.

(A) Ordinances or resolutions establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations shall be initiated by a member of Council. Immediately after the first reading of the ordinance or resolution, the Presiding Officer of Council shall set a date for a public hearing before a joint meeting of Council and the Planning Commission, not earlier than thirteen (13) days after the first reading. The Clerk of Council shall cause a notice of the public hearing to be published one (1) time in a newspaper of general circulation within the municipality; said publication to be made at least seven (7) days prior to the date of the public hearing. When the amendment, revision, change or repeal involves ten (10) or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council by certified mail with return receipt at least seven (7) days before the date of the public hearing, to the owners of the property within, contiguous to and directly across the street from the affected parcel or parcels. Such notices shall be sent to the addresses of owners appearing on the County Auditor's current tax list and to other lists as may be required by Council. The failure of delivery of the notice shall not invalidate any ordinance or resolution. (Amended 11-8-83)

(B) Immediately after the public hearing referred to in division (A) of this section, a copy of each ordinance or resolution establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations shall be referred to the Planning Commission. Within fifteen (15) days after receipt of referral, the Planning Commission shall return to the Clerk of Council the written recommendations of a majority of the members of the Commission. The ordinance or resolution shall be given its second reading at the next regular meeting of Council, unless an earlier special meeting is called for that purpose.

(C) A concurring vote of at least two-thirds (2/3) of the membership of Council shall be necessary to pass any zoning ordinance or resolution which differs from the written recommendations of the Planning Commission, but in no event shall an ordinance or resolution be considered as having passed unless it receives at least a majority vote of the members of Council.

SECTION 4.12. ADOPTION OF CODES BY REFERENCE.

Council may adopt or incorporate by reference, codes prepared by the state or any department, board or other agency or political subdivision of the state, or any standard or model ordinance or code prepared and promulgated by a public or private organization, including but not limited to codes and regulations pertaining to fire, fire hazards, fire prevention, plumbing, electrical, building, refrigeration machinery, piping, boiler, heating, air conditioning and housing and other matters as Council may deem appropriate. The ordinance or resolution adopting any standard ordinance or code shall make reference to the date and source of the standard ordinance or code without reproducing it at length in the ordinance. Subsequent amendments or changes to standard codes may also be adopted and incorporated by reference. When adopted by reference, publication of the standard ordinance or code shall not be required, but copies of same shall be kept in the office of the Clerk of Council to be available to interested persons.

SECTION 4.13. CODIFICATION OF ORDINANCES AND RESOLUTIONS.

By a majority vote of the members of Council, the Council may cause the ordinances and resolutions of the municipality to be revised, codified, recodified, rearranged, or published in book form. Such revisions, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall immediately be effective upon approval of a majority vote of the members of Council, and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published in the manner provided in Section 4.14 of this Charter and no further publication shall be necessary. A current service supplementing such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council.

SECTION 4.14. PUBLICATION OF ORDINANCES AND RESOLUTIONS.

(A) Ordinances and resolutions shall be published by posting copies thereof in not less than five (5) public places in the municipal corporation for a period of not less than fifteen (15) days after their adoption. The public places for such posting shall be determined by the Council. If the ordinance or resolution exceeds five (5) pages, the Clerk of Council may, in lieu of posting the full ordinance or resolution, determine to post a notice setting forth the number, if any, and the title of the ordinance or resolution and a statement that copies of the ordinance or resolution are available for inspection during normal business hours in the Office of the Clerk of Council, and the posting of that notice shall be a sufficient publication.

(B) The Clerk of Council shall make and retain a certificate as to the times and places where such postings are done, and that certificate shall be prima facie evidence that the copies or the notice were posted as required by division (A) of this section. Failure to make or retain the certificate required by this division shall not invalidate any ordinance or resolution.

(C) Failure to publish by posting, or to maintain such posting, as required by division (A) of this section shall not invalidate an ordinance or resolution, and in such events the Clerk of Council may authorize publication by posting at a later date.

ARTICLE V THE MAYOR

SECTION 5.01. ELECTION, TERM AND QUALIFICATIONS.

(A) The person elected as Mayor at the election held in November, 1975, or any successor thereto, under the general statutory plan of government for villages shall be the Mayor under this Charter until January 1, 1980, and he shall exercise all powers, duties and functions of the Mayor under this Charter. At the regular municipal election to be held in November, 1979 and every four (4) years thereafter, the Mayor shall be elected from the municipality at large for a term of four (4) years commencing on the first day of January following the election.

(B) The Mayor shall have been an elector of the municipality for at least eighteen (18) months prior to taking office and during the term of office. Except as provided under this Charter or the general laws of Ohio the Mayor shall not hold any other public office with any other unit of government; except office in a political party, be a notary public, or serve in the national guard or the armed forces of the United States. Except as authorized under this Charter or the general laws of Ohio, the Mayor shall not hold any other office or employment with the municipality during the term for which he was elected, and shall not hold any compensated office or employment with the municipality until one (1) year after the expiration of the term for which he was elected or appointed.

SECTION 5.02. POWERS AND DUTIES.

(A) The Mayor shall be the chief executive officer and the chief conservator of the peace of the municipality, and shall have the following powers and duties:

- (1) He shall be responsible for the administration of all municipal affairs as required by this Charter, the ordinances and resolutions of the municipality and the state laws, to the extent those laws are not inconsistent with this Charter or the ordinances and resolutions of the municipality and shall assure that the Charter, ordinances, resolutions and laws are faithfully executed.
- (2) He shall be the President of the Council and shall preside at all regular and special meetings of the Council. He shall have no vote except in case of a tie vote among Council members on any matter that may come before the Council; except that he may not cast a vote to break a tie vote of the Council on any matter where this Charter requires the Council to approve or concur in an action of the Mayor. The Mayor shall not have a veto power over ordinances or resolutions passed by the Council.

- (3) He shall, with the assistance and full cooperation of the Administrative Director and Finance Director, submit the annual capital and operating budget and the annual appropriation measures of the municipality to the Council for its consideration, revision and adoption.
- (4) He shall prepare and submit a full report of the administrative activities of the municipality to the Council for each fiscal year, and shall make such other reports and recommendations to the Council as he deems necessary or as the Council may require. The Administrative Director, Finance Director and other officials and employees of the municipality shall provide such assistance and cooperation as the Mayor may require concerning all matters under their supervision or control.

SECTION 5.03. VACANCY, TEMPORARY ABSENCE OR DISABILITY.

(A) In the event of a vacancy in the office of Mayor, the President Pro Tempore of Council shall become the Mayor, unless the person holding the office of President Pro Tempore of Council shall decline, by a written statement to be filed with the Clerk of Council, to succeed to the office of Mayor and elects to remain as a member of Council and as the President Pro Tempore of Council. In the event the President Pro Tempore of Council declines to succeed to the office of Mayor, the Council shall elect another of its members to succeed to the office of Mayor for the term as provided in this section. If the vacancy in the office of Mayor occurs subsequent to seven (7) days before the date when candidates for the office of Mayor must file their nominating petitions or if two (2) years or less remain in the term vacated, the person succeeding to the office of Mayor under this section shall serve for the unexpired term. If the vacancy in the office of Mayor occurs at least (7) seven days prior to the date when candidates for the office of Mayor must file their nominating petitions and more than two (2) years remain in the term vacated, the person succeeding to the office of Mayor under this section, shall serve until a successor to the office of Mayor is elected at the next regular municipal election for the remainder of the unexpired term. The person elected for the unexpired term shall take office on the first day of January following election.

(B) When the Mayor is temporarily absent from the municipality or is under a temporary disability, the President Pro Tempore of Council shall serve as Acting Mayor and shall exercise all the powers, duties and functions of the Mayor. The President Pro Tempore of Council shall continue as a Council member and as the President Pro Tempore of Council while serving as the Acting Mayor, and shall be entitled to vote on all matters coming before the Council.

ARTICLE VI ADMINISTRATIVE DEPARTMENTS

SECTION 6.01. ADMINISTRATIVE DIRECTOR.

(A) There is hereby created the office of Administrative Director, who shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Administrative Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The Administrative Director shall be qualified by training or experience in the management of public service enterprises, public or private safety forces, other governmental services or functions, or commercial or industrial operations. The Mayor and Council shall be the sole judges of the qualifications of the Administrative Director.

(C) The Administrative Director shall be the principal administrative officer of the municipality. He shall, subject to the supervision of the Mayor, control, direct and supervise all departments, divisions, and other sub-units of departments, except the departments of Law, Finance, Police and Fire. The Administrative Director shall perform other duties and have other powers and responsibilities as are provided in this Charter or by ordinance or resolution. In addition to and not by way of limitation upon the above stated general powers, the Administrative Director shall also have the following powers, duties and functions:

- (1) To manage and supervise the operation of all municipal utilities, including the treatment and distribution of water, the sewerage system, the generation and/or distribution of electrical energy, artificial and natural gas plants and systems, and other similar municipal utilities. He shall collect all rents, service and other charges required to be paid for municipal utilities, however the rates for services and charges for all municipal utilities shall be established by the Council.
 - (2) To make such bylaws and regulations as he deems necessary for the safe, economical and efficient management and protection of all municipal utilities. Such bylaws and regulations, when not repugnant to this Charter, the municipal ordinances and resolutions or to the Constitution of Ohio shall have the same validity as ordinances.
 - (3) To supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, landings, market houses, bridges, viaducts, sidewalks, sewers, drains, ditches, culverts, ship channels, streams, and water courses as well as the lighting, sprinkling, and cleaning of all streets, alleys, and public buildings and places.
 - (4) To appoint employees of departments and divisions subject to his supervision and control, provided such positions are first authorized by the Council; but such appointments shall be subject to approval by the Mayor. Such appointments and the Mayor's approval thereof shall be in writing, and shall be filed with the Clerk of Council and shall be subject to the provisions of Section 7.03 (B) of this Charter pertaining to civil service.
 - (5) To discipline and with the approval of the Mayor discharge employees of departments and divisions subject to his supervision and control.
- (Amended 11-2-99)

SECTION 6.02. LAW DEPARTMENT.

(A) There is hereby created the Department of Law to be headed by a Law Director. The Law Director shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Law Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The Law Director shall be an attorney-at-law duly authorized to practice law in the State of Ohio. The Law Director may serve as legal counsel to any school district, county, township, other municipality, or other political subdivision, district or unit of the federal, state or local governments and may receive additional compensation therefor; however he shall not be required to serve as legal counsel for a school district by virtue of his office as Law Director. The Law Director may also engage in the private practice of law and he may hold other public or private employment.

(C) The Law Director shall be the legal adviser, prosecuting attorney and counsel for the municipality, and, subject to the direction of Council, shall represent the municipality in all proceedings in Court or before any administrative board or body. The Law Director shall perform all other powers, duties and functions now or hereafter imposed on City Solicitors under the laws of Ohio; and shall perform other duties as required by this Charter, by ordinance or resolution, or as directed by the Mayor.

(D) The Council may provide for assistants and special counsel to the Law Director. All assistants shall be appointed by the Law Director. The assistants shall be responsible to the Law Director and when authorized, may exercise all or any part of the powers, duties and functions granted to the Law Director under this section. Special counsel may be employed by Council to perform powers, duties and functions authorized by and in the manner provided by Council.

SECTION 6.03. FINANCE DEPARTMENT.

(A) There is hereby created the Department of Finance to be headed by a Finance Director. The person holding the office of Village Clerk-Treasurer under the general statutory plan for villages at the time this Charter becomes effective shall be the Finance Director with all the powers, duties, and functions provided under this Charter, and shall hold that office until January 1, 1980. The offices of Village Clerk and Treasurer under the general statutory plan for villages shall be abolished effective January 1, 1978. Beginning January 1, 1980 and thereafter, the Finance Director shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Finance Director shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The Finance Director shall be qualified by training or experience to carry out the powers, duties and functions of the office. The Mayor and the Council shall be the sole judges of the qualifications of the Finance Director.

(C) The Finance Director shall be the chief fiscal officer of the municipality and shall perform the powers, duties and functions now or hereafter given to City Auditors and Treasurers under the general laws of Ohio to the extent those laws are not in conflict with this Charter. The Finance Director, in addition to the powers, duties and functions prescribed by this Charter shall have other powers, duties and functions as required by ordinance or resolution, or as directed by

the Mayor. The Finance Director shall keep the financial records of the municipality, establish the accounting systems, financial records and reports used by the offices, departments, divisions, bureaus, boards and commissions of the municipality; assist the Mayor in the preparation and submission of appropriation measures, estimates, budgets, capital programs and other financial matters; provide full and complete information concerning the financial affairs and status of the municipality as requested by the Mayor or Council; and provide full and complete information and assistance concerning the finances or accounting systems or records of any office, department, division, bureau, board or commission of the municipality as requested by the Mayor or Administrative Director.

SECTION 6.04. POLICE DEPARTMENT.

(A) There is hereby created a Department of Police to be headed by a Police Chief. The Police Chief shall be appointed by the Mayor subject to the approval of the Council by a vote of at least a majority of its members. The Police Chief shall serve at the pleasure of the Mayor and the Council and may be removed without cause by the Mayor with the approval of the Council by a vote of at least a majority of its members; or he may be removed without cause by the Council, by a vote of at least two-thirds (2/3) of its members without the consent of the Mayor.

(B) The powers, duties and functions of the Police Chief and the members and the organization of the Department of Police shall be as provided in this Charter, by the ordinances and resolutions of the municipality and the general laws of Ohio, to the extent the general laws are not inconsistent with the Charter or the ordinances and resolutions of the municipality.

(C) All full-time regular police officers shall be appointed by the Mayor and subject to approval by Council upon the recommendation of the Police Chief for a probationary term of at least six months. Upon successful completion of the probationary term, the Mayor upon recommendation of the Police Chief and approval by Council shall appoint such police officers as permanent members of the Police Department. Thereafter, they shall be subject to removal from employment only in the manner provided by law.

(D) All part-time or special police officers and all other persons employed in the Police Department shall be appointed by the Mayor upon the recommendation of the Police Chief for an indefinite term.
(Amended 11-7-95.)

SECTION 6.05. FIRE DEPARTMENT.

The Council may establish and provide for the organization, powers, duties and functions of a Department of Fire, which may be a full time department, a part time or volunteer department; or the Council may contract with any other governmental agency or private corporation or association to provide all or part of the fire services for the municipality. In addition to those powers, duties and functions provided by this Charter or by ordinances or resolution, the officials and members of any fire department providing fire services to the municipality, may exercise those powers, duties and functions authorized by the general laws of Ohio pertaining to municipal fire departments to the extent they are not inconsistent with this Charter or the ordinances and resolutions of the municipality.

SECTION 6.06. MUNICIPAL ENGINEER.

The Council may provide engineering services to the municipality by annual contracts or by contracts for shorter or longer periods of time. The Council may also create such engineering positions of employment as it deems appropriate.

SECTION 6.07. OTHER ADMINISTRATIVE DEPARTMENTS.

(A) In addition to the administrative offices and departments specifically established and created by this Charter, the administrative offices, departments, divisions, bureaus and other sub-units existing under the laws of Ohio and ordinances and resolutions of the municipality on the effective date of this Charter shall continue, with their existing powers and duties, until they are abolished, merged, combined or otherwise altered or reorganized by Council.

(B) Each department, division, bureau or other sub-unit shall be organized and have those powers, duties and functions as are provided under this Charter; under the ordinances or resolutions of the municipality; and under the laws of Ohio to the extent such laws do not conflict with the provisions of this Charter or the ordinances and resolutions of the municipality.

SECTION 6.08. ACTING DEPARTMENT HEADS.

In the event of a vacancy or the temporary absence or disability of the head of any administrative department, the Mayor may appoint an acting head of the department until the vacancy is filled or the temporary absence or disability is removed.

**ARTICLE VII
BOARDS AND COMMISSIONS****Section 7.01. PLANNING COMMISSION.**

(A) There is hereby created a Planning Commission consisting of the Mayor, two (2) members of the Council to be appointed by a majority vote of the Council to serve during their current term on Council, and four (4) electors of the municipality to be appointed by the Mayor to serve overlapping six (6) year terms of office, and to serve without compensation.

(B) The Planning Commission shall perform those duties provided by this Charter and by the law of Ohio with respect to zoning, planning and platting of lands and such further duties as are assigned to it by ordinance or resolution, provided that the final decision on all matters before the Planning Commission shall be made by Council. In the event of a conflict between state law and an ordinance or resolution of this Village, the ordinance or resolution shall prevail. In the absence of an ordinance or resolution, state law shall apply except to the extent it is inconsistent with the provisions of this Charter.

(Amended 11-5-85; 11-4-86)

SECTION 7.02. (RESERVED)**SECTION 7.03. CIVIL SERVICE.**

(A) Until the municipality attains city status, the employees of the municipality shall have that tenure, if any, as provided by the laws of Ohio pertaining to the general statutory plan of government for villages, except as those laws may conflict with the provisions of this Charter.

(B) After the municipality attains city status, the Council shall establish a Civil Service Commission by ordinance or resolution fixing its membership, the method of appointment, terms of office, powers, duties and functions; provided that appointments and promotions in the classified civil service shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. All compensated positions of employment shall be in the classified civil service except the following offices and positions which shall be in the unclassified or exempt service:

- (1) Members of Council.
 - (2) The Clerk of Council and other employees of the Council.
 - (3) The Mayor.
 - (4) The Administrative Director.
 - (5) The Finance Director.
 - (6) The Law Director, Assistant Law Directors, and special legal counsel.
 - (7) All heads of Departments.
 - (8) Professional engineers employed by the municipality.
 - (9) Members of Boards and Commissions established by this Charter or by Council.
 - (10) Volunteer members of the Fire Department, members of the auxiliary police unit within the Police Department, and part time employees of the Departments of Police and Fire.
 - (11) The Secretary of each Board and Commission established by this Charter or by Council, provided that if such Secretary holds other employment within the classified civil service of the municipality, this section shall not exempt such person from the requirement of competitive examination to hold such other employment.
 - (12) Persons of exceptional professional or scientific qualifications engaged as consultants.
 - (13) Unskilled laborers as defined and authorized by the Civil Service Commission.
 - (14) Temporary employees who are not employed for more than ninety (90) continuous days or for more than ninety (90) days in one year.
 - (15) Special categories of employees employed under federal or state programs, as determined by the Civil Service Commission.
- (Amended 11-8-83)

SECTION 7.04. PARK AND RECREATION BOARD.

(A) There is hereby created a Park and Recreation Board consisting of seven (7) electors of the Municipality. Six shall be appointed by the Mayor for overlapping terms of office of five (5) years and shall be subject to the approval of Council by a vote of a majority of its members. One member shall be associated with the principal youth soccer organization existing in the Village, one member shall be associated with the principal youth baseball/softball organization existing in the Village, one member shall be associated with the Lexington senior citizens, and three members shall represent the Village at large. The seventh member of the Board shall be that member of Council currently serving as Chairman of the Buildings and Grounds Committee of Council. (Amended 11-4-03)

(B) The Park and Recreation Board shall have those powers, duties and functions as provided by this Charter and as provided by the ordinances and resolutions of the Municipality. (Amended 11-5-85)

SECTION 7.05. CHARTER REVIEW COMMISSION.

(A) There is hereby created a Charter Review Commission which shall consist of five (5) members to be appointed as follows: two (2) shall be appointed from the membership of the Council by a majority vote of the members for one (1) year terms of office; and three (3) shall be electors who are not members of the Council to be appointed by the Mayor for overlapping terms of office. The first members appointed by the Mayor shall be appointed so that one (1) serves for a one (1) year term, one (1) serves for a two (2) year term and one (1) serves for a three (3) year term. Thereafter each member appointed by the Mayor shall serve for a three (3) year term of office. Members of the Commission shall serve without compensation. Terms of the Commission shall begin on the first day of July after their appointment, commencing in the year 1978. (Amended 11-2-82)

(B) The Charter Review Commission shall meet only in odd numbered years unless a meeting shall be called because of an emergency by a majority of its members in an even numbered year. The Charter Review Commission shall continuously review the provisions of this Charter and the operations of the Municipality and shall report its recommendations, if any, for changes or revisions in this Charter to the Council no later than the first day of June of each year in which it meets. The Clerk of Council shall publish the recommendations, if any, of the Commission in full at least once in a newspaper of general circulation in the Municipality. The Council shall submit any amendments to the Charter recommended by the Commission to the voters in the manner provided by the Constitution and laws of Ohio. The Council shall appropriate funds to the Commission as determined to be necessary by the Commission to carry out its powers, duties and functions, including amounts required to pay any consultants or special legal counsel selected by the Commission. (Amended 11-2-93)

SECTION 7.06. DEPOSIT AND INVESTMENT BOARD.

(A) There is hereby created a Deposit and Investment Board consisting of the Mayor, Finance Director and Law Director.

(B) The Deposit and Investment Board shall deposit and invest the monies of the municipality in the manner and as provided by the ordinances and resolutions of the municipality. If ordinances and resolutions providing for the deposit and investment of the monies of the municipality do not exist or are not adopted, those monies shall be deposited and invested in the manner provided by the laws of Ohio until otherwise provided by the ordinances and resolutions of the municipality.

SECTION 7.07. INCOME TAX BOARD OF REVIEW.

The Council may, by ordinance or resolution, establish a Board of Review to function as an appeal board and to perform other duties in regard to the administration of the municipal income tax. The membership of the Board, their term of office, method of appointment and the Board's powers, duties and functions shall be provided by ordinance or resolution. Meetings of the Board, when hearing or deciding an appeal of a taxpayer shall not be open to the public unless the taxpayer filing the appeal requests the meeting to be open. Copies of proceedings of the Board shall be promptly filed with the Finance Director.

SECTION 7.08. CEMETERY BOARD.

Control over cemeteries and burial grounds owned by the municipality shall be vested in a Board of Cemetery Trustees as that Board is organized under the laws of Ohio pertaining to general statutory plan villages; and the Board shall be governed in all respects and have those powers, duties and functions as provided by the laws of Ohio pertaining to general statutory plan villages, unless otherwise inconsistent with this Charter. When a cemetery or burial ground is owned in common or jointly by the municipality and one or more other municipal corporations or townships, the control over the cemetery or burial ground shall be vested and governed in all respects by the laws of Ohio relating to union cemeteries. If the laws of Ohio shall now or hereafter fail to provide for the government and operation of any cemetery or burial ground owned solely, or in common or jointly with other units of government, the Council shall provide by ordinance or resolution for the organization of a board, together with its powers, duties and functions to control and operate the cemetery or burial ground.

SECTION 7.09. OTHER BOARDS AND COMMISSIONS.

The Council may create, change and abolish other boards and commissions as it determines to be necessary, and may provide for their organization, membership, terms of office of members, powers, duties and functions by ordinance or resolution.

SECTION 7.10. ORGANIZATION - VACANCIES.

(A) Unless otherwise provided in this Charter, each board and commission of the municipality, including the Board of Review for income tax administration described in Section 7.07 of this Charter but excluding the governing bodies of cemeteries described in Section 7.08 of this Charter, shall:

- (1) Organize at its first meeting each year by electing a chairman, vice chairman and secretary. The chairman and vice chairman shall be a member of the board or commission and the secretary may be elected from within or without the membership of the board or commission. The secretary shall keep an accurate and complete record of the proceedings of the board or commission; and shall file a copy of its proceedings with the Clerk of Council for public inspection. The Income Tax Board of Review shall file copies of its proceedings with the Finance Director.
- (2) Take action by motion, and a majority vote of the members of the board or commission shall be necessary to take any action. A majority of the members shall constitute a quorum. All members of Boards and Commissions shall be electors of the municipality.
- (3) Adopt rules for the conduct and government of the board or commission, however the rules may not conflict with the provisions of this Charter or ordinances and resolutions of the municipality.

(B) Unless otherwise provided in this Charter, a vacancy during the term of any member of a board or commission created by this Charter or by ordinance or resolution shall be filled for the unexpired term in the manner authorized for an original appointment.

SECTION 7.11. TRANSITION TO CHARTER FORM.

All boards and commissions of the municipality existing at the effective date of this Charter, whether or not specifically mentioned in the Charter, shall continue in existence after this Charter becomes effective; and the terms of members holding office at the effective date of the Charter shall be continued until the expiration of the term and successors have been appointed under the Charter. From and after the effective date of this Charter, all boards and commissions and members thereof shall be subject to the provisions of this Charter.

**ARTICLE VIII
NOMINATIONS, ELECTIONS, INITIATIVE, REFERENDUM AND RECALL****SECTION 8.01 NOMINATIONS AND ELECTIONS.**

(A) Nomination for the office of Mayor and members of Council shall be made by petition, signed by qualified electors of the Municipality not less in number than thirty-five (35). The petition shall be accompanied by a declaration of candidacy and shall be filed with the election authorities not later than the time required by the general laws of Ohio for candidates for municipal offices who are to be nominated by petition. No primary shall be held for candidates for Mayor or members of Council.

(Amended 11-3-92)

(B) The Mayor and members of Council shall be elected at non-partisan elections to be held at the times and to be otherwise conducted in the manner provided by the election laws of Ohio, unless otherwise provided for in this Charter.

(C) The Council may, by a two-thirds (2/3) vote of its members, at any time, order a special election by ordinance or resolution, the purpose of which shall be set forth in the ordinance or resolution; and which may include the referral of a proposed or pending ordinance or resolution to the voters for their approval or rejection.

(D) All regular and special elections shall be conducted in the manner and at the times provided by the election laws of Ohio, except as otherwise provided in this Charter.

SECTION 8.02. INITIATIVE AND REFERENDUM.

(A) Ordinances and resolutions may be proposed by initiative petition and adopted by election, and ordinances and resolutions adopted by Council shall be subject to referendum as provided by the Constitution and laws of Ohio, except:

- (1) Initiative and referendum petitions shall be filed with the Finance Director.
- (2) Ordinances and resolutions initiated by petition or subjected to referendum shall be submitted to the electors for approval or rejection at the next general or primary election occurring subsequent to ninety (90) days after certification of the text of the ordinance or resolution to the Board of Elections, unless Council, by a majority vote of its members, submits such ordinances or resolutions for approval or rejection at a special election.

SECTION 8.03. RECALL.

(A) The electors shall have the power to remove any elected official of the municipality from office by a recall election in the manner provided in this section.

(B) If the elected official shall have served six (6) months of a term, a petition demanding removal may be filed with the Clerk of Council, who shall note thereon the name and address of the person filing the petition and the date of filing; and shall deliver to the person a receipt, and attach a copy of the receipt to said petition. The petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one (1) instrument. Each part shall contain the name and office of the person whose removal is sought and a statement of the grounds for removal. The petition shall be signed by at least that number of electors which equals twenty-five percent (25%) in number of the electors voting at the last preceding regular municipal election.

(C) Within twenty (20) days after the date of filing a petition, the Clerk of Council shall determine whether or not the petition meets the requirements of this section. If the Clerk of Council shall find the petition insufficient, he shall promptly certify the particulars in which the petition is defective, deliver a copy of the certificate to the person who filed the petition and make a record of the delivery. The person who filed the petition shall be allowed a period of ten (10) days after the day on which the delivery was made, in which to make the petition sufficient. If the Clerk of Council finds the petition sufficient, he shall promptly certify its sufficiency to Council, deliver a copy of the certificate to the person whose removal is sought and make a record of that delivery.

(D) If the person whose removal is sought does not resign within five (5) days after the day on which delivery has been made, Council shall thereupon fix a day for holding a recall election, not less than seventy-five (75) days nor more than ninety (90) days after the date of delivery, and shall cause notice of the recall election to be published on the same day of each week, for two (2) consecutive weeks, in a newspaper of general circulation in the municipality. At the recall election, this question shall be placed upon the ballot: "Shall (naming the person whose removal is sought) be allowed to continue as (naming the position held)" with provision on the ballot for voting affirmatively or negatively. In the event a majority of the vote is negative, the person shall be considered as removed and the office shall be deemed vacant. The person removed at the recall election shall not be eligible for appointment to the vacancy. If the person is not removed at the recall election, no further recall petitions shall be filed against such person for a period of one (1) year following the election.

(E) A removal by recall election shall not bar the person removed from becoming a candidate for office in future elections.

ARTICLE IX FINANCE, TAXATION AND DEBT

SECTION 9.01 GENERAL.

The laws of Ohio relating to budgets, appropriations, taxation, debts, bonds, assessments and other fiscal matters of the municipality shall be applicable to the municipality, except as modified by or necessarily inconsistent with the provisions of this Charter, or when provision therefor is made in the Constitution of Ohio.

SECTION 9.02 PURCHASING PROCEDURE.

(A) The Administrative Director shall be the contracting officer of the municipality; provided that the Council by a two-thirds (2/3) vote of its members may authorize any department head to act as the contracting officer for matters within the jurisdiction of that department. The authorization to a department head to act as contracting officer for his department may be revoked by Council by a two-thirds (2/3) vote of its members. The Council, or any member thereof, may at any time inspect any contract, purchase order or statement of an amount due from the municipality; and the appropriate contracting officer shall cooperate fully with the Council, or member thereof, to facilitate such inspection.

(B) When any expenditure or contract is more than the amount specified by the laws of Ohio for which work may be accomplished only after advertisement and bidding, such contract or expenditure shall first be authorized and directed by ordinance or resolution passed by Council, and after advertisement once a week for at least two (2) weeks in a newspaper of general circulation in the municipality. If satisfactory bids are received, the appropriate contracting officer shall award a written contract to the lowest and best bidder.

(C) When it becomes necessary to make alterations or modifications in connection with any work or improvements covered by contract, they shall be made only upon the order of the appropriate contracting officer. No such order shall be effective until the price to be paid for the work or material, or both, under the altered or modified contract, shall have been agreed upon in writing and signed by the contractor and the appropriate contracting officer on behalf of the municipality. (Amended 11-7-89)

(D) Except as otherwise authorized by the Revised Code of Ohio, no contract, agreement or other contractual obligation involving the expenditure of money shall be entered into or authorized by the appropriate contracting officer unless the Finance Director, Mayor or their duly authorized representative shall first certify:

(1) That the money required for such contract, agreement, obligation or expenditure is in the municipality's treasury or in the process of collection, and

(2) That the money has been appropriated by Council for the specified purpose, and it remains unencumbered.

Said certification as to the availability of funds and the appropriation of funds shall be filed and recorded in the accounting records of the municipality and a copy furnished to the vendor or contractor. Without the certification, contractual obligations shall be void and unenforceable against the municipality unless recognized by Council as a moral obligation. (Amended 11-4-03)

(E) The appropriate contracting officer shall not divide any order or contract to avoid the requirements of competitive bidding. (Amended 11-7-89)

**ARTICLE X
GENERAL PROVISIONS****SECTION 10.01. CONFLICTS OF INTEREST, ETHICS, CAMPAIGN FINANCING.**

The laws of Ohio pertaining to conflicts of interest and criminal misbehavior, ethics and financial disclosure by municipal officials and employees, and campaign financing and other election practices of candidates for municipal office shall apply under this Charter.

SECTION 10.02 REMOVAL OF ELECTED OFFICIALS, MEMBERS OF BOARDS

AND COMMISSIONS.

(A) Council may remove from office any elected official of the municipality, or any member of a board or commission established by this Charter or by ordinance or resolution, for any of the following reasons:

- (1) Failure to meet or maintain the qualifications of office as fixed in this Charter; or, if not fixed in the Charter, as established by ordinance or resolution.
- (2) Final conviction of a felony or misdemeanor involving moral turpitude during a term of office.
- (3) Failure by a member of Council to attend three (3) consecutive regular Council meetings, unless any of the absences is excused by a majority vote of the members of Council; or failure by a member of a board or commission to attend three (3) consecutive regular meetings of said board or commission unless any of the absences is excused by a majority vote of the members of the board or commission.
- (4) Gross misconduct; malfeasance, or nonfeasance in office; or judicial declaration of incompetency.

(B) Charges under this section may be brought only by any two (2) members of Council. The charges shall be in writing and shall specify the ultimate facts upon which the charges are based. The charges shall be filed with the Clerk of Council who shall set a date, time and place for a hearing on the charges, which hearing shall be not less than fifteen (15) nor more than forty-five (45) days after the charges are filed. The Clerk of Council shall cause a copy of the charges and notice of the date, time and place of the hearing, to be served on the accused by causing the copy of the charges and notice to be handed to the accused; or by sending the copy of the charges and notice to the last known place of residence of the accused by certified mail for delivery to addressee only, with a return receipt requested. If the copy of the charges and notice sent by certified mail are returned to the Clerk of Council undelivered, or if the return receipt for the copy of the charges and notice is not returned to the Clerk of Council within ten (10) days after they are mailed, the Clerk of Council shall cause a copy of the charges, together with notice of the date, time and place of the hearing, to be served on the accused by leaving the copy and notice at the last known place of residence of the accused within the municipality.

(C) The presiding officer of Council may continue the hearing from time to time as the circumstances may require. The Mayor, President of Council or any judge of the Court of Common Pleas or Municipal Court with jurisdiction in the Municipality shall have power to issue subpoenas for witnesses and the production of evidence on behalf of the persons bringing the charges, the accused person or Council. The testimony of witnesses at the hearing shall be under oath administered by the officer of Council presiding at the hearing or by any other person authorized by law to administer oaths.

(D) Removal of the accused person shall be upon the affirmative vote of two-thirds (2/3) of the members of Council, or the affirmative vote of two-thirds (2/3) of the remaining members of Council if the accused is a member of Council. An accused member of Council shall not vote on any matter affecting the question of his removal. If Council votes to remove the accused person, the officer of Council presiding at the hearing at which the vote for removal was passed shall issue an order removing the accused, and the accused shall be suspended from office without compensation after the date of suspension.

(E) The accused person may appeal from a decision of Council for removal from office by filing a notice of appeal in the Court of Common Pleas having jurisdiction within the Municipality. The notice of appeal shall be filed within thirty (30) days after the issuance of the order removing the accused. The appeal to the Court of Common Pleas shall be limited to questions of law and to the issue of whether Council abused its discretion. Further appeals may be taken to higher courts as provided by law. If the accused person does not appeal within the thirty (30) day period, or if the Court of Common Pleas or higher court finally affirms the decision of Council removing the accused, the suspension shall become permanent; the accused shall forthwith forfeit the office; the office shall become vacant and shall be filled in the manner provided by this Charter. If the Court of Common Pleas or higher court reverses the decision of Council removing the accused, he shall be immediately restored to office and shall be paid any compensation denied during the period of suspension.

SECTION 10.03. SUCCESSION.

The Municipality of Lexington under this Charter is hereby declared to be the legal successor of the Municipality of Lexington under the laws of Ohio; and shall have title to all property, real and personal, owned by its predecessor, including all monies on deposit and all taxes in process of collection, together with all accounts receivable and rights of action. The Municipality shall be liable for all outstanding orders, contracts and debts of its predecessor, and for any other obligations for which it may be held liable by any court of competent jurisdiction. All contracts entered into by the Municipality or for its benefit prior to January 1, 1978 shall continue in full force and effect.

SECTION 10.04. EFFECT OF CHARTER ON EXISTING LAWS AND RIGHTS.

(A) The adoption of this Charter shall not affect any pre-existing rights of the Municipality, nor any right, liability, pending suit or prosecution, either on behalf of or against the municipality or any officer thereof, nor any franchise granted by the municipality, nor pending proceedings for the authorization of public improvements or the levy of assessments therefor. Except as a contrary intent appears in this Charter, all acts of Council of the municipality, including ordinances and resolutions in effect at the date this Charter becomes effective, shall continue in effect until amended or repealed.

(B) No action or proceeding pending against the municipality or an officer thereof shall be abated or affected by the adoption of this Charter. All actions or proceedings shall be prosecuted or defended under the laws in effect at the time they were filed.

SECTION 10.05. RETIREMENT SYSTEMS.

The laws of Ohio governing the retirement of officers and employees of the municipality shall be applicable under this Charter.

SECTION 10.06. AMENDMENT OR REPEAL OF CHARTER.

This Charter may be amended or repealed by the voters as provided by the Constitution of Ohio.

SECTION 10.07. EFFECT OF PARTIAL INVALIDITY.

A determination that any article, section, division, or part of any article, section or division of this Charter is invalid shall not invalidate nor impair the force and effect of any other part, except to the extent that the other part is wholly dependent for its operation upon the part declared invalid.

ARTICLE XI TRANSITIONAL PROVISIONS

SECTION 11.01. EFFECTIVE DATE OF CHARTER.

This Charter shall be submitted to the electors of the municipality at an election to be held November 2, 1976. If approved by a majority of those voting, the Charter shall take effect from the date the election is certified for the purpose of designating, nominating and electing officers of the municipality and conducting municipal elections. For all other purposes this Charter shall take effect on January 1, 1978.

SECTION 11.02 CONTINUANCE OF PRESENT OFFICIALS - ABOLITION OF OFFICES.

Except as otherwise provided by this Charter, all persons holding office at the time this Charter takes effect shall continue in office and in the performance of their duties until other provisions have been made in accordance with this Charter for the performance or discontinuance of the duties of the office. When that provision shall have been made, the term of any officer shall expire and the office shall be abolished. The powers conferred and the duties imposed upon any officer, body, commission, board, department or division of the municipality under the laws of Ohio or under any municipal ordinance, resolution or contract in force at the time this Charter takes effect shall, if the office, body, commission, board, department or division is abolished by this Charter, be thereafter exercised and discharged by those upon whom are imposed corresponding functions, powers and duties by this Charter or by any ordinance or resolution of Council thereafter enacted.

SECTION 11.03 CONTINUANCE OF PRESENT EMPLOYEES.

Every employee of the municipal government on January 1, 1978, shall continue in such employment subject in all respects to the provisions of this Charter and ordinances, resolutions, rules or regulations enacted or promulgated under the Charter.

**CHARTER OF THE MUNICIPALITY OF
LEXINGTON, OHIO**

CERTIFICATE

We, the qualified members of the Charter Commission of the Municipality of Lexington, Ohio, elected November 4, 1975, have framed the foregoing Charter and have fixed November 2, 1976, as the time of the election at which the Charter shall be submitted to the electors of the Municipality of Lexington.

George M. Billman
Lawrence F. Hannon
Kenneth E. Clever
Suzanne C. Heichel
Richard T. Connolly
Donald L. Herbert
Allen M. Cook
Charles F. Pscholka
Rita M. Erre
Barbara G. Schnuerer
Helen L. Garverick
John W. Ward
Homer D. Grant
Richard P. Worley

John B. Rhind, Chairman

ORIGINAL

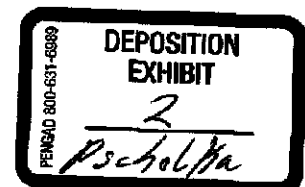
ORDINANCE NO. 04 - 66

BY MR. WHITE

AN ORDINANCE GRANTING A FRANCHISE TO CONSOLIDATED ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, INCLUDING THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE VILLAGE OF LEXINGTON, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY TO THE VILLAGE OF LEXINGTON, AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES, AND FOR THE TRANSMISSION AND DISTRIBUTION OF THE SAME WITHIN, THROUGH, OR ACROSS SAID VILLAGE OF LEXINGTON, STATE OF OHIO.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LEXINGTON, STATE OF OHIO:

SECTION 1. Consolidated Electric Cooperative, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the transmission and distribution of electric energy only, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances and appliances, including electric substations, to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said Village of Lexington, State of Ohio.



SECTION 2. Said lines, appurtenances and appliances shall be constructed so as to not interfere with the traveling public in its use of the streets, thoroughfares, alleys, bridges, and public places.

SECTION 3. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of twenty (20) years from the date of the passage of this Ordinance. The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. Said Grantee shall save the Village harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said lines for the distribution and transmission of electric energy.

SECTION 5. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall comply with the provisions of Village Code 913 and/or similar chapters of the Village Code with regard to right of way excavations as that chapter now exists or is hereafter modified; promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. Notwithstanding R.C. Chapter 4939, nothing in this grant of franchise shall be interpreted to interfere with, prevent or preclude the future ability of the Village to properly charge fees to the Grantee for the use of the Village's right of way.

SECTION 7. Wherever in this Ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

SECTION 8. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

SECTION 9. That all electric service installed under this franchise in new subdivisions shall be placed underground. All other electric service under this franchise shall be installed underground unless engineering considerations make it impracticable. Grantee shall also install underground wiring for street lights in all new subdivisions.

SECTION 10. That this Ordinance must be accepted within sixty days of its adoption by Grantee and notice of acceptance provided to the Village.

SECTION 11. That Ordinance 73-45 adopted May 21, 1973 be and the same is hereby repealed.

SECTION 12. That this Ordinance shall be in full force and effect from and after the earliest period allowed by law.

DATE: December 20, 2004

Aye 6 Nay 0 Abstain 0

Eugene R. Parkison
EUGENE R. PARKISON, MAYOR

Brenda J. Wilson
Brenda J. Wilson
Clerk of Council

APPROVED AS TO FORM:

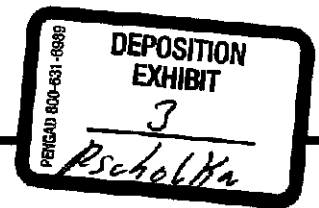
Jon K. Burton
Jon K. Burton, Law Director

CLERK OF COUNCIL CERTIFICATE

I, Brenda J. Wilson, the duly appointed Clerk of Council of the Village of Lexington,
Ohio, do hereby certify that copies of this Ordinance were duly posted for at least fifteen (15) days in at
least five (5) places within this Village in accordance with Section 4.14 of the Village Charter.

Brenda J. Wilson
Brenda J. Wilson
Clerk of Council

Chuck Pscholka



From: Richard Miller [dmiller@CONELEC.COM]
Sent: Tuesday, September 21, 2004 11:04 AM
To: cpscholka@villageoflexington.org
Subject: Lexington - AEP Form

Attachments: Lexington - AEP Form 9-04.doc



Lexington - AEP
Form 9-04.doc ...

<<Lexington - AEP Form 9-04.doc>>

Chuck,

This document is the one used by AEP for the Delaware, it is a little vague and leaves a lot up to the village. This line of thought is in keeping with what I believe, as each time there is a new annexation the village should be able to choose who can best serve the development.

You will notice that I have edited the document for Lexington and that it is set up to be passed as an emergency.

I will review other franchise agreements and see if I can find wording that deal with the effective date.

Thanks

Dick

ORDINANCE NO. _____

AN ORDINANCE GRANTING FRANCHISE TO CONSOLIDATED ELECTRIC COOPERATIVE, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN, AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES, AND PUBLIC PLACES OF THE VILLAGE OF LEXINGTON, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRIC ENERGY TO THE VILLAGE OF LEXINGTON, AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES, AND FOR THE TRANSMISSION AND DISTRIBUTION OF THE SAME WITHIN, THROUGH, OR ACROSS SAID VILLAGE OF LEXINGTON, STATE OF OHIO.

Be it ordained by the Council of the Village of Lexington, State of Ohio:

SECTION 1. Consolidated Electric Cooperative, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise, and authority to acquire, construct, maintain, and operate in, above, under, across, and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the transmission and distribution of electric energy only, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances and appliances, including electric substations, to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof for light, heat, power, or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission and distribution of the same within, through, or across said Village of Lexington, State of Ohio.

SECTION 2. Said lines, appurtenances and appliances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges, and public places.

SECTION 3. The rights, privileges, and franchise hereby granted shall be in force and effect for a period of 25 years from the date of the passage of this Ordinance.

The rights, privileges, and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges, and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. Said Grantee shall save the Village harmless from any and all liability arising in any way from Grantee's negligence in the erection, maintenance, or operation of said lines for the distribution and transmission of electric energy.

SECTION 5. Whenever said Grantee shall begin the erection or installation of any lines or equipment, it shall comply with the provisions of _____ City/Village Code Chapter 901 and/or similar chapters of the _____ City/Village Code with regard to right of way excavations as that chapter now exists or is hereafter modified; promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

Comment (B11): This provision must be modified to fit each City/Village or it can be eliminated. Brian

SECTION 6. Nothing in this grant of franchise shall be interpreted to interfere with, prevent or preclude the future ability of the City/Village to properly charge fees to the Grantee for the use of the City/Village's right of way.

SECTION 7. Wherever in this Ordinance, reference is made to the City/Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges, franchises, and obligations herein contained by or on behalf of said City/Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said City/Village, or of said Grantee, whether so expressed or not.

SECTION 8. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

SECTION 10. EMERGENCY CLAUSE. That this ordinance is hereby declared to be an emergency measure necessary to provide for the public peace, safety, health and welfare of the Village, and as such will be in full force and effect immediately upon its passage.

SECTION 11. This Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of same.

VOTE ON RULES SUSPENSION:

YEAS____NAYS____
ABSTAIN____

VOTE ON EMERGENCY CLAUSE:

YEAS____NAYS____
ABSTAIN____

PASSED: _____, 2004

YEAS____NAYS____
ABSTAIN____

ATTEST:

CITY/VILLAGE CLERK

MAYOR



ORDINANCE NO. 73- 45

AN ORDINANCE GRANTING TO MORROW ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ACQUIRE, CONSTRUCT, MAINTAIN AND OPERATE IN THE STREETS, THOROUGHFARES, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE VILLAGE OF LEXINGTON, STATE OF OHIO, AND ITS SUCCESSORS, LINES FOR THE DISTRIBUTION OF ELECTRIC ENERGY TO CERTAIN PARTS OF THE VILLAGE OF LEXINGTON AND THE INHABITANTS THEREOF FOR LIGHT, HEAT, POWER AND OTHER PURPOSES AND FOR THE TRANSMISSION OF THE SAME WITHIN, THROUGH OR ACROSS SAID VILLAGE OF LEXINGTON, STATE OF OHIO

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LEXINGTON, OHIO:

SECTION 1. That Morrow Electric Cooperative, Inc., its successors and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, bridges, and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, and its successors (hereinafter called "Village"), lines for the distribution of electric power and/or energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances to render public utility service in the Village and to the inhabitants thereof by supplying electric power and/or energy to the Village and to the inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power or any other purposes or purpose for which electric power and/or energy is now or may hereafter be used, and the transmission of the same within, through or across the Village; provided, however, that Grantee shall provide electric service hereunder only within: 1) The area or areas of the Village presently being developed and other such areas as may be developed in the future all within areas where the Cooperative may provide adequate service when requested and without crossing lines of other utilities which are in service

at the date of this request, April 2, 1973. 2) Any other area or areas annexed to the Village after the date of this Ordinance any portion of which is either being provided electric service by Grantee at the time of such annexation, or which at the date of this Ordinance is closer to the facilities of Grantee than to those of any other electric supplier.

SECTION 2. That said lines and appurtenances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges and public places. The location of all poles, or conduits, shall be made under the supervision of the proper board or committee of the Village government.

SECTION 3. That the rights, privileges and franchise hereby granted shall be in force and effect for a period of fifty (50) years from the date of the passage of this Ordinance.

That the rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of the Village hereby reserves the power to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.

SECTION 4. That said Grantee shall save the Village harmless from any and all liability arising in any way from negligence in the erection, maintenance or operation of said lines for the distribution of electric power and/or energy.

SECTION 5. That whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

SECTION 6. That wherever in this Ordinance, reference

is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

SECTION 7. That this Ordinance shall be accepted by the Grantee within sixty (60) days from the date of the passage of the same, and shall be in full force and effect from and after the earliest period allowed by law.

Passed: 5, 21, 23

Allen M. Cook
Mayor

ATTEST:

John Enterline
Clerk-Treasurer

APPROVED AS TO FORM:

Harry M. Wells
Village Solicitor

This Ordinance posted pursuant to O.R.C. 731.24 by _____

_____ on _____ at _____

and removed on _____.

John Enterline
Clerk-Treasurer



**Consolidated Electric
Cooperative, Inc.**

Your Touchstone Energy® Partner 

Corporate Office:
5255 St. Rt. 95
P. O. Box 111
Mount Gilead OH 43338-0111
Ph: (419) 947-3055

District Office:
680 Sunbury Road
P. O. Box 630
Delaware OH 43015-0630
Ph: (740) 363-2641

Web Site: www.conelec.com

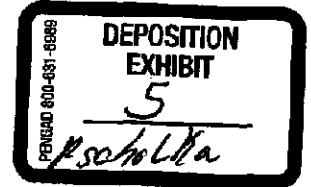
E-mail: service@conelec.com

Phone: (800) 421-5863

Fax: (419) 947-3082

December 22, 2004

To: The Honorable Eugene R. Parkinson
Subject: Acceptance of Ordinance 04-66



Dear Mayor Parkinson,

Please extend my appreciation to the Council for approving our franchise agreement and I personally would like to thank you for all your assistance and support in our efforts. We look forward to forming a strong relationship with you and with the Village as we work together to serve the electrical needs of the residents of Lexington.

As you are aware, Consolidated Electric Cooperative is a non-profit entity that focuses on the members we serve and the level of service we offer, rather than focusing on bottom line returns for outside investors. Much like the Village and its relationship with residents, our customers are our member-owners and their needs and service come first. We appreciate the opportunity to serve within the Village and the day when village residents will receive electrical service from Consolidated Electric Cooperative.

In accordance to Section 10, of Ordinance 04-66, Non-exclusive Franchise Agreement with the Village of Lexington, Consolidated Electric Cooperative, as Grantee, hereby accepts Ordinance 04-66 as approved December 20, 2004.

Sincerely,

Brian Newton
President

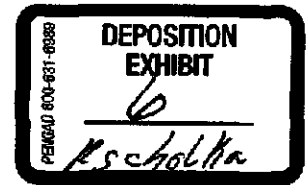


Levering Brothers
Energy Services, Inc.



THE VILLAGE OF LEXINGTON

44 West Main Street
Lexington, Ohio 44904
419.884.0765
Fax 419.884.0109
www.villageoflexington.org



Brian Newton, President
Consolidated Electric Cooperative
5255 State Route 95
Post Office Box 111
Mount Gilead, Ohio 43338

Re: Electric Service to Woodside Subdivision, Lexington, Ohio

Dear Mr. Newton,

Please be informed that the Village of Lexington, Ohio, with recommendation of the developer and in accordance with Franchise Ordinance Number 04-66, dated December 20, 2004, does desire and request that Consolidated Electric Cooperative to provide electric service to the remaining undeveloped lots within the Woodside Subdivision.

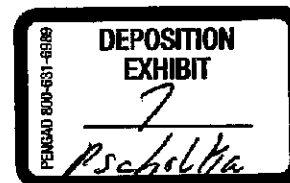
Said undeveloped lots are more fully described in Exhibit A that is attached hereto.

Sincerely,

Charles F. Pschotka
Administrative Director
Lexington, Ohio

enclosures

1st 6-2-69
2nd 6-9-69
Third 6-16-69



ORDINANCE NO. 69-21

An Ordinance granting to Ohio Power Company, its successors and assigns, the right to acquire, construct, maintain and operate in the streets, thoroughfares, alleys, bridges and public places of the Village of Lexington State of Ohio, and its successors, lines for the distribution of electric energy to the Village of Lexington and the inhabitants thereof for light, heat, power and other purposes and for the transmission of the same within, through or across said Village of Lexington, State of Ohio.

Be it ordained by the Council of the Village of Lexington, State of Ohio, and it is hereby ordained by authority of the same that:

Section I.

Ohio Power Company, its successors, and assigns (hereinafter called "Grantee") are hereby granted the right, privilege, franchise and authority to acquire, construct, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, bridges and public places (as the same now exist or may hereafter be laid out) of the Village of Lexington, State of Ohio, lines for the distribution of electric energy, either by means of overhead or underground conductors, with all the necessary or desirable appurtenances to render public utility service in said Village and to the inhabitants thereof by supplying electric energy to said Village and the inhabitants thereof, and persons or corporations beyond the limits thereof, for light, heat, power or any other purposes or purpose for which electric energy is now or may hereafter be used, and the transmission of the same within, through or across the said Village of Lexington, State of Ohio.

Section II.

Said lines and appurtenances shall be constructed so as to interfere as little as possible with the traveling public in its use of the streets, thoroughfares, alleys, bridges and public places. The location of all poles, or conduits, shall be made under the supervision of the proper board or committee of the Village government.

Section III.

The rights, privileges and franchise hereby granted shall be in force and effect for a period of fifty (50) years from the date of the passage of this ordinance.

The rights, privileges and franchise hereby granted shall not be construed to be exclusive and the Council of the Village of Lexington hereby reserves the power to grant similar rights, privileges and franchises to any other person or persons, firm or firms, corporation or corporations.

Section IV.

Said grantee shall save the Village harmless from any and all liability arising in any way from negligence in the erection, maintenance or operation of said lines for the distribution of electric energy.

Section V.

Whenever said Grantee shall begin the erection of any lines or equipment it shall promptly and diligently prosecute the work to completion and leave the streets, thoroughfares, alleys, bridges, and public places where such work is done in as good condition of repair as before such work was commenced.

Section VI.

Wherever in this ordinance, reference is made to the Village or the Grantee, it shall be deemed to include the respective successors or assigns of either; and all rights, privileges and obligations herein contained by or on behalf of said Village, or by or on behalf of said Grantee, shall be binding upon, and inure to the benefit of the respective successors or assigns of said Village, or of said Grantee, whether so expressed or not.

Section VII.

This ordinance shall be accepted by the grantee within Sixty (60) days from the date of the passage of same.

Passed in Council, this 16 day of June, 1969.

Edward C. Kent
Mayor

of the Village of

Lexington, Ohio

Clerk

Harry D. Smith