Civic Association Manual

NEW CASTLE COUNTY
CIVIC ASSOCIATION MANUAL
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INTRODUCTION

Prior to 1973, communities were not required to maintain open space or common facilities. Generally, the public open space in these communities is considered County parkland. The parkland is open to all New Castle County residents and is maintained as part of the County park system. Most of these older communities have civic associations. Unlike maintenance corporations, membership is not required or mandated by Code.

Civic organizations operate throughout the County and many form on a regional basis. Interested individuals may join on a voluntary basis in order to participate in the group's activities. Those activities include everything from social functions to political activism. Many civic groups serve the important function of providing a collective voice to issues that affect their communities. Group leaders communicate directly with government officials and the media to influence many types of governmental decisions and policies. Government officials often rely on views expressed by leaders of civic groups as an indication of the public sentiment.

This manual addresses issues commonly encountered by members of civic association. It focuses on three major areas: Deed restrictions, Organization of Civic Association meetings, and Finances. You will also find a Frequently Asked Question section.

In the appendix of this manual, we have included many valuable publications on programs useful to civic associations; from the Snow Removal Reimbursement program through DelDOT to the Emergency Home Repair Programs through the Department of Community Services and much more!

DECLARATIONS OF RESTRICTIONS – DEED RESTRICTIONS

Civic associations may exist in communities pursuant to covenants stated in the deeds or declarations of restrictions that were created by the developer before any lots were sold to homeowners. Deed covenants and declarations of restrictions, commonly referred to as deed restrictions, create private contractual arrangements whereby the persons purchasing the property encumbered by the restrictions agree to abide by the restrictions. A deed restriction may, for example, prohibit vegetable gardens, limit the number of pets that may be kept on each lot, or provide for architectural controls. An architectural control committee is an example of a type of homeowner association that may be mandated by the deed restrictions. This type of committee may be organized to approve plans for the construction on a private residential lot within the subdivision to insure the homeowner is in compliance with the deed restrictions. Examples of such construction are decks, fences, and additions. The deed restrictions contain the controlling provisions to which the operation of this committee must conform. Each community will have separate restrictions so it is important to consult your documents.

Deed restrictions are private contracts. The County is not a party to these private restrictions and the covenants exist only among the community homeowners. For the reasons stated below, New Castle County cannot enforce private contracts and therefore, cannot enforce deed restrictions.

Generally, deed restrictions are written in such a way that any affected party, which would be any homeowner, can enforce a deed restriction. However, enforcing deed restrictions against your neighbor is not only time consuming and costly, but often uncomfortable. Commonly, a committee is created by provisions contained in the restrictions that have the specific responsibility of enforcing the deed restrictions. Any resident or the committee may file a suit to enforce the deed restrictions in Chancery Court and obtain a temporary or permanent injunction.

The process for amending the deed restrictions is described in the Code and includes the need for County Council approval. First, any consent percentage stated in the declaration must be satisfied. For instance, if the declaration requires two-thirds (2/3) approval for any change, that percentage must be attained before moving forward with an amendment. Once membership consent is acquired, a written request for the proposed amendment must be sent to New Castle County Departments of Land Use and Law. The request must include a copy of the present restrictions, a copy of the proposed restrictions, and the reason for the change. Proof of required consent from the appropriate percentage of the homeowners must also be included in the request. The Departments of Land Use and Law then make recommendations to County Council regarding the proposed change. County Council may adopt a resolution approving the change during a County Council meeting. A fee, currently one thousand seven hundred twenty-five ($1,725) dollars, must be submitted along with the request for the change.

Why the County Cannot Enforce Deed Restrictions

Normally, the County is not a party to any private deed restrictions, which are contracts among the residents of the community. State law clearly provides that the County does not have the power to enact private or civil law concerning civil relationships.

The issue of the County's involvement with private deed restrictions has been percolating in the County for many years before the passage of Ordinance No. 97-011 in June of 1997. Prior to its passage, the Board of Adjustment was prohibited, by *New Castle County Code* § 2-259(9), from considering a variance application where it was brought to the attention of the Board that the variance the applicant was seeking involved constructing a structure or otherwise engaging in activity that was prohibited by the deed restrictions governing the development where the applicant's property was located. If the deed restrictions were presented to the Board, it would automatically refuse to consider the application, regardless of the continued viability of the deed restrictions.

This practice had been of concern to the County for a number of years. Particularly, there was a concern that automatically refusing to consider such applications did not permit the applicant to demonstrate that the deed restrictions were being honored only in the breach, or that the presentation of the deed restrictions was motivated by a personal conflict between neighbors (particularly in the case of deed restrictions of dubious viability).

Additionally, there were constitutional concerns with prohibiting access to the Board by a resident seeking a variance from the County's zoning laws on the basis of a private, unrelated contract with his fellow homeowners. Moreover, there was a realization on the part of the County that amending deed restrictions (at least old ones) was virtually impossible because of high super-majority provisions (sometimes 100%) or significant time restraints on seeking amendments (once every ten years). Lastly, there was a concern that this limitation on the Board's jurisdiction was in violation of the State Code's grant of jurisdiction to the Board of Adjustment.

Ordinance No. 97-011 rectified this situation by prohibiting the consideration of deed restrictions. Instead, neighborhood residents opposed to the applicant's position must assert arguments based on the "character of the neighborhood." Additionally, as has traditionally been the case, the residents may still sue to enforce the deed restrictions in Chancery Court by obtaining a temporary or permanent injunction.

ORGANIZATION OF CIVIC ASSOCIATION MEETINGS

Below are some tips on how to run your meetings, as well as ways to strengthen communication and participation in your association. It is intended that this manual will be updated periodically. Accordingly, your comments are greatly appreciated.

Use Your By-Laws

To establish guidelines for how the association and its meetings are run, it is best to follow your association's by-laws. The by-laws, depending on their content, should contain information on what constitutes a quorum for the meeting. It should also identify how often the general membership should meet. By-laws should also detail the number of officers required for the organization and how to run the election.

If you do not have a set of by-laws, you are encouraged to adopt a set.

Bylaws

A corporation's bylaws outline how the affairs of the corporation are conducted. Essentially, bylaws serve as rules among the members. The bylaws delineate the powers and duties of the governing body and define the responsibilities of each office. Bylaws may also explain voting and election procedures, terms of office, and any other information the corporation deems relevant. Bylaws may not contradict information provided in the certificate of incorporation, but may supplement it. Bylaws are not filed with the Secretary of State and are not recorded. They can be repealed, altered, amended or supplemented according to the terms stated in the bylaws.

The governing body should review any existing bylaws to see if changes would be beneficial to the running of the corporation. If bylaws do not exist or cannot be located, the governing body should create bylaws.

Board Members Duties

Board members should meet regularly to discuss community issues prior to the general meetings. The most effective organizations hold regular board meetings. These meetings are critical to address issues of concern so answers can be sought by the board and presented to the membership. By holding separate board meetings, the board has an opportunity to solve problems and present a united front when the community is assembled.

At the board meeting prior to the general meeting, it is suggested the board discuss the manner by which the community will be notified of the meeting, whether it be by flyer, mail or having a sign placed at the entrance to the neighborhood. Adequate advance notice of the meeting and its location allows the members to reserve the date and time in their busy schedules. The board should review the by-laws to make sure all meeting requirements are being met related to elections, budget and dues.

The Board should put together a meeting agenda. The agenda is a great way for the Board to make sure that the meeting stays on track and covers all of the issues of concern to the residents.

General Membership Meetings

It is encouraged that proper meeting etiquette be utilized when running your meetings by using "Robert's Rule of Order." It is a publication and is available at your local book store. This book discusses "parliamentary procedure" and will help the Board understand how to keep the meeting "in order." It discusses how to entertain a motion and how to take a vote. It is an invaluable tool for keeping the meeting and your members on track as the meeting progresses.

To improve attendance at your general membership meetings, it is suggested that you hold your meetings on regularly scheduled dates and at the same location if possible; for example, the first Monday of the month at your local library. Another way to increase attendance is to invite guest speakers to your meetings. Sometimes having a guest speaker can spark the interest of those who have not attended a meeting in a while. It may also urge non-members to become members. The guests can be your State Legislators, County Council members, or speakers from various departments in New Castle County, e.g. Community Policing, Community Services, etc.

To lessen the burden on the neighborhood leadership, it is suggested the Board ask for involvement of the entire community by requesting members serve on committees such as landscaping, budget, or events. This helps delegate responsibilities within the membership. It also directs focus on individual areas of the neighborhood.

If you are scheduled to hold elections, you should hold elections in accordance to the terms in your by-laws. It is recommended that you request nominations in advance of the general meeting so ballots can be prepared.

If it is time to review the budget and present a dues figure to vote on, copies of the budget and the current financial standing of the organization are always helpful in reassuring a positive outcome to the vote. The payment of dues or membership to a civic association is strictly voluntary. AGAIN – remember to check your by-laws and make sure everything is done in accordance.

FINANCES

Civic Dues

The payment of dues or membership to a civic association is strictly voluntary. Civic associations are not able to force homeowners to pay. The Board should prepare a budget and have members vote on annual dues each year.

Budget

The budget should contain all anticipated costs that will be incurred in the upcoming year. These costs include, but are not limited to: grass cutting, snow removal, insurance, taxes, accounting fees, court costs, bank fees, stationery and postage, post office box, and any other items reasonably relating to the affairs of the civic association. The members of the Board cannot receive a salary but should not incur personal out-of-pocket costs for civic association related activities.

Next, the total amount should be divided by the number of homes in the neighborhood. Anticipated non-payments should be factored into the budget. It may take a few years of experience to "balance" your association's budget. It is recommended when hiring contractors for snow removal or landscaping, the Board puts the contracts out to bid. This shows the membership an effort was made to secure the best contract possible.

Books and Records

The corporation should maintain organized books and records. A current list of the members of the corporation must be maintained according to Delaware General Corporation Law. A ledger should be maintained that accurately records expenditures as they are incurred and satisfied, and any income and interest. All other material relevant to the affairs of the civic association should be properly organized. Any member of the association has a right to review the books and records with proper notice.

Working Together - Membership and Management

The decision to serve on the Board of your civic association is strictly voluntary. The members of the governing body will have control over what occurs in the community. If you want to be involved in decision making, volunteer to serve on the governing body. If you do not wish to manage the corporation, cooperate with those who are in control. Remember, no homeowner receives a salary for serving on the civic association's board. Service is about sacrificing time and energy and working for all members of the association. Above all, a civic association should be neighbors working together for the common cause of bettering their communities.

Who is responsible for snow removal?
DelDOT will not clear snow from residential streets. It is up to the members of the community to arrange for snow removal. DelDOT may provide reimbursement for snow removal under certain conditions through their Snow Removal Reimbursement Program.

How does a civic association qualify for snow removal reimbursement?
The Delaware legislature adopted House Bill No. 544, as amended, on July 1, 1996. This bill stated the Department of Transportation shall be responsible for reimbursing certain eligible organizations up to seventy-five (75) percent of its costs for snow removal services within residential developments or communities. A policy statement is issued each year. Your community must register with the Department of Transportation by the first of November of each year, by contacting DelDOT at (302) 760-2085.

How can a community get street signs?
Some communities would like additional signs in their area, for example, "Children at Play" signs. Contact DelDOT for these types of requests.

How does a community get streetlights installed?
The establishment of a special tax assessment district may authorize streetlights in residential areas by action of the County Council. A petition must be signed by fifty one percent (51) percent of the lot owners within the subdivision. To obtain a street light petition form, call New Castle County Treasury Department at (302) 395-5083.
Note: the homeowners will be taxed for the cost of the electricity.

Who do we contact about a street light outage?
Delmarva Power maintains the street lights. To report an outage, please contact Delmarva at (800) 898-8042 or online at: https://delmarva.streetlightoutages.com/public/default.html

Who should be contacted for speed bumps?
Speed bumps are funded by your State Senator or State Representative through his or her suburban street fund account. If your community is interested, please contact your district's elected State official(s).

PROCEDURE FOR PROCUREMENT AND INSTALLATION OF COMMUNITY STREETLIGHTS

As a community, you must determine the style of light standard desired by the members of your community. Once you have made your decision, contact Denny Hardman, New Castle County Office of Treasury, 87 Reads Way, New Castle, DE 19720. He can also be reached by dialing (302) 395-5083.

Mr. Hardman will provide the following:

1. A Homeowner Petition- For homeowners to sign endorsing the installation of streetlights.
2. A list of the names of all property owners and applicable parcel numbers
3. Information containing the current tax rates to give the community a glimpse of the cost.

Upon receipt of the above information, the community members must circulate the petition and obtain 51% of the property owner's signatures endorsing the installation of streetlights.

All property owners must be contacted to express their opinion on this issue. The developer can sign the petition representing the undeveloped lots in the community.

Once the above items are complete, contact Mr. Hardman and advise him of this. He will provide further information as needed.

Policy for Placing Sand Barrels in Developments

A civic association or other recognized representative of a development may request the delivery of sand to be used for traction during snow and ice conditions. The civic association may choose to furnish barrels or may use barrels supplied by the District. If the civic association provides barrels, they should be clearly marked with the development name and must have drain holes in the bottom of the barrels.

Because of a limited number of barrels available, we may be unable to meet all of the requests we receive. Therefore, each requested location will be evaluated and will be approved only if it meets the minimum criteria. Barrels at the approved locations will be refilled upon request, when our workload permits. The Department will not provide shovels or other device to spread the sand. We will remove the barrels we provide and any remaining sand after April 1st. The civic association will be responsible for cleanup and disposal of barrels it provides.

The attached application for sand barrels must be submitted no later than November 1 of this year and must include a development map showing the locations for barrels to be placed. Requests for barrels adjacent to private property must be accompanied by a signed form indicating the property owner's approval. Sign-up forms are available on request at the Public Relations Office or by calling (302) 326-4462 to have them mailed to you.

Please send applications to:

George W. Hollis
Division of Highway Operations
250 Bear-Christiana Road
Bear, DE 19701

Community Programs And Services
Transportation Enhancements Program

Find out more about this community-driven program that facilitates the development of non-traditional transportation projects!

Overview

The Transportation Enhancements Program, established through federal legislation, is intended to encourage development of a more balanced, multi-modal approach to mobility and accessibility.

The Transportation Enhancements Program provides funding for non-traditional, transportation related projects. These projects help to further the cultural, aesthetic, and environmental goals of the communities in which they are built.

All federal Transportation Enhancements projects must meet the following three criteria:

- The project must have a relationship to surface transportation;
- The project must be dedicated to public use;
- The project must fit into at least one of the eligible activities.
- Examples of projects include:
- installing sidewalks
- preserving scenic and historic areas
- rehabilitating historic buildings
- creating bicycle and multi-use pathways
- renovating streetscapes
- installing lighting and crosswalks

For more information, please contact Jeff Niezgoda, Planning Supervisor at (302) 760-2178 or at Jeff.Niezgoda@state.de.us