

**ORDINANCE NO. 2071**

**AN ORDINANCE TO ADOPT CHAPTER 96, SUSSEX COMMUNITY IMPROVEMENTS, TO FACILITATE THE IMPROVEMENT OF STREETS AND ROADWAYS OWNED AND CONTROLLED BY HOMEOWNERS ASSOCIATIONS, PROPERTY OWNERS ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS**

WHEREAS, it is determined that in order to best serve the health, safety and welfare of the citizens of Sussex County, it is necessary to establish a procedure to administer a Suburban Community Improvements program controlled by Sussex County; and

WHEREAS, this ordinance creates the Sussex County Improvements Ordinances for the purpose of establishing a system whereby any qualifying Homeowners Association, Property Owners Association or Condominium Association may petition the Sussex County Council to improve the streets and appurtenances within their community. The Program seeks to provide implementation and financing of the improvements, however, Sussex County does not undertake or accept any independent financial obligations by virtue of this Ordinance;

WHEREAS, the Sussex County Suburban Community Improvements Program shall be contained within Chapter 96 of the Sussex County Code, a previously reserved section of the Code.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

**Chapter 96: SUSSEX COMMUNITY IMPROVEMENTS**

**§ 96-1. Definitions**

As used in this chapter, the following terms shall have the meanings indicated:

1. County Council: The County Council of Sussex County.
2. County Engineer: The County Engineer employed by the County Council or his/her authorized representative.
3. Director of Finance: The Director of Finance employed by the County Council or, in his absence, the person employed as Acting Director of Finance
4. HOA: Any Homeowners Association, Property Owners Association or Condominium Association
5. Sussex Community: Any unincorporated community within Sussex County. To qualify for the Sussex Community Improvement Program (SCIP), the Community shall meet the following criteria:
  - I. Contain at least 5 separate and distinct property owners;
  - II. Have streets that aggregate a minimum of 500 linear feet of road surface or in the case of condominium or other type of individually owned units of multiunit buildings whose streets aggregate a minimum of 300 feet of road surface; and
  - III. Be situated in such a way that in the opinion of the County Engineer the community is reasonably and economically capable of being improved by the laying, repairing or completion of streets, minor drainage upgrades and other miscellaneous community improvements as defined in this section.
  - IV. Have direct access to a road, which is part of the State of Delaware Department of Transportation (DeIDOT) road system or will be connected to the DeIDOT road system when the project provided for in this subchapter is complete.
  - V. Have a legally established property owners association or condominium association (HOA) to provide for the perpetual maintenance of such Sussex Community Improvements as provided herein, or to be maintained by DeIDOT.

6. Public Roads: Roads dedicated to public use, which may be maintained by DeIDOT.
7. Community Improvements: Road repair, construction or augmentation, minor drainage upgrades or other miscellaneous improvements related to safe and efficient vehicular travel within the community, or other improvements designated by the County Engineer that will upon completion benefit or serve the entire community .
8. Parcel: Any unit of real estate assessed by Sussex County and identified by its own Sussex County Tax Map Number (including Unit Number, if applicable), including but not limited to lots, townhouses, multi-family units and/or condominium units.

**§ 96-2. Communities Requesting an Upgrade from Private Roads to Public Roads Maintained by DELDOT**

Sussex Communities seeking to upgrade roads to Public Roads maintained by DELDOT shall follow the procedures set forth in the Delaware Code for that process.

**§ 96-3. Preparation of Petition Form**

- a. Any HOA may request the County Engineer to prepare a petition form for inclusion in the Sussex Community Improvement Program. Said request must be on the HOA's letterhead, signed by the President or Vice President and include a statement that said request has been approved in accordance with the provisions of their Association's bylaws. Said request must also include a description of the area, the approximate aggregate length of roadway to be included in the proposed Program and a description of the proposed improvements.
- b. If the County Engineer determines that the Community meets the criteria of § 96-1, he/she shall prepare sufficient copies of a petition form requesting the County Council to obtain estimates of costs and charges for Community Improvements and submit the question of establishing a Sussex Community Improvement Program to an election. Said petition form shall clearly define the area to be included in the proposed Program, and may include a map showing the parcels of land, and existing roadways within the proposed Program boundary and, may include a preliminary cost estimate.
- c. The County Engineer shall submit said petition form to the County Attorney for approval.

**§ 96-4. Restrictions on Voting and Petitions**

Sussex County Council may be petitioned for inclusion in the proposed Chapter 96 program by the owners of parcels used for residential, commercial, or other uses and that abut the roadway that is the subject of the proposed Chapter 96 program. Each parcel, as defined in Section 96-1, shall be entitled to one (1) signature on the petition and one(1) vote in the election, regardless of whether owned jointly, severally, by tenants-in-common, or by an artificial entity. Provided however, that each recorded lot that is buildable, as designated by the Director of Planning and Zoning, shall be entitled to one (1) signature on the petition and one (1) vote in the election.

**§ 96-5. Action Following Receipt of Petition**

- a. Upon receipt of valid petitions signed by owners of more than 50% of the parcels or buildable lots in the Community, the County Engineer shall prepare:
  1. Project detailed cost estimates for the completion of the proposed Community Improvements.
  2. A layout of the community clearly showing the Community boundaries, existing streets, and the nature and location of proposed improvements.
  3. Estimated charges to each property owner and the street frontage used to calculate said estimated charges.
- b. After the information specified in 96-5a has been compiled, a public meeting shall be scheduled to present said information to the property owners. Notice of the meeting shall be

made through a direct mailing to all Community property owners as listed in the County's assessment records, and said notice shall be sent not less than 20 days prior to the date of the meeting. Based upon the responses and comments received at the public meeting, the County Engineer may take action to adjust the information specified in 96-5a as long as said information continues to meet the intentions outlined in the executed petition form.

- c. Within 60-days of the date of the Public Meeting, the County Engineer shall present the estimated costs and charges required in 96-5a to the County Council. Should County Council determine to support the project, it shall by resolution:
1. Formally accept the community into the Sussex Community Improvement Program.
  2. Establish the date, time and place of the election, with provision for absentee voting by those unable to appear in person.
  3. Designate the person to act as judge of the election.
  4. Direct the County Engineer to notify the voters of the date, time and place of the election, including the estimated costs and charges. Such notice shall be posted in at least two (2) public places within the Community at least twenty (20) days before the day of the election and by direct mail to the voters of record at least twenty (20) days before the day of the election.

**§ 96-6. Action Following Election**

- a. Following the election, the judge of the election shall certify the results to the County Council. The ballots shall be retained in the safe keeping of the County for 1 year before being destroyed.
- b. If the certificate of the judge of the election reveals the majority of the votes cast at the election are in favor of the Sussex Community Improvement Program, the County Council shall, by resolution, authorize the County Engineer to perform the specified improvements in the Program; and authorize the Director of Finance to bill the owners of all assessable parcels within the Sussex Community.

**§ 96-7. Contracts for Improvements; Procedure for Awarding**

- a. The County Engineer shall prepare contract documents and specifications required for completion of the improvements voted upon by the community.
- b. Upon the opening of sealed proposals, the County Council, after the County Engineer's recommendation, shall award the contract or contracts.

**§ 96-8. Supervision of Work**

After the awarding of the contract or contracts, all work performed under the contract or contracts shall be under the direct administration, oversight and/or inspection of the County Engineer or his/ her authorized representative.

**§ 96-9. Rights-of-Way; Acquisition of; Limitations on**

In the event that street rights-of-way are inadequate or where street rights-of-way are in question, the acquisition of necessary rights-of-way for the Sussex Community construction project may be

assisted by Sussex County. In that case, the acquisition of such necessary street rights-of-way shall follow the current practice of Sussex County in acquiring property.

**§ 96-10. Maintenance of Improvements**

All roads and streets constructed pursuant to this chapter, intended to be private, shall be constructed in accordance with standards adopted by Sussex County. Such rules and regulations for construction of private subdivision streets and roads shall, in addition to specifying standards for the design and construction thereof, require that, simultaneous with the construction of such streets and roads, a means or mechanism be provided to insure the perpetual maintenance of such private streets and roads, but in no event shall the State or County be responsible for such maintenance.

**§ 96-11. Assessments; District Limits; Establishment of Separate Account**

- a. When the project is substantially complete, the County Engineer and Finance Director will compile the final cost accounting of the program in question. This cost accounting will be used to determine an assessment to be charged against each parcel within the Sussex Community. Assessment billings shall be made annually in parallel with the County fiscal year. At the discretion of the Finance Director, an initial billing for a project that receives substantial completion during a current fiscal year may receive a special billing for the portion of the year remaining prior to June 30. All subsequent billings will be made for one (1) year, shall be due and payable on the same schedule as County real estate tax bills, subject to the same penalties for the late payment, and shall be collectible by any legal process available by statute for the collection of County real estate taxes. All billings will be performed at the direction of the Finance Director.
- b. The County Engineer shall prepare an assessment roll which shall describe each lot or parcel of real property in the Community and shall show the name or names of the reputed owner or owners thereof and the amount of the assessment to be levied upon such lot or parcel of land. Before adopting the assessment roll, the County Council shall hold a public hearing for review and comment by the affected property owners. Notice of such public hearing shall state that the assessment roll has been completed, note where it may be examined by any interested persons and specify the date, time and location. Notice of the public hearing shall be published in a newspaper published within the County and having a general circulation therein, once in each of the 2 weeks immediately preceding the week in which the public hearing is to be held. After holding the public hearing the County Council may adopt the assessment roll as originally proposed or amend the assessment roll as it deems necessary, then adopt it as amended.
- c. The County Council shall direct the Board of Assessment to cause the words "Special Community Lien" to be placed beside the name of each freeholder in the suburban community in order that persons such as prospective buyers of, or attorneys making title searches upon, the properties making inquiry at the office of the board of assessment concerning County taxes may be informed that special liens exist against the properties in the Sussex community.
- d. Any contributions given by any state or federal agency, person, firm or corporation to assist in defraying the costs of the Program must be made by May 1 in order to be considered in reducing the assessments in the district for the year beginning the following July 1.
- e. The Director of Finance shall establish a separate account for all receipts and disbursements for each Program.

**§ 96-12. Collection of Assessment Fees**

- a. Any lot, parcel or building unit located within the Community, whether vacant or occupied, shall become liable for an assessment fee.
- b. The annual assessment fee shall be based on the front footage measurement of the lot or parcel as specified in § 96-14.
- c. The annual assessment fee shall be billed and collected as specified in 96-11-a.

**§ 96-13. Property Exempt from Assessment**

- a. No assessment shall be made against any property during the period in which it is not subject to taxation and assessment for County and Municipal purposes.
- b. No assessment shall be made against any property which is owned by the Sussex County or the State of Delaware or the legal HOA.
- c. No assessment shall be made against that portion of a parcel during the period in which the portion qualifies for agricultural, horticultural or forest uses as more fully defined by 9 Del. C. §§ 8330 through 8337, inclusive.

**§ 96-14. Front Footage Measurements**

Front footage for every assessable lot, parcel, or building unit shall be computed by the procedures enumerated:

- (1) Where the parcel contains two (2) or more recorded lots, the front footage measurement for the parcel shall be the total of the front footage measurements of each lot within the parcel. Provided, however, that any recorded lot that is buildable as designated by the Director of Planning and Zoning, shall be separately assessed.
- (2) A lot or parcel in a street with one (1) side only fronting the street shall be assessed the total street footage.
- (3) A lot or parcel on two (2) or more streets shall be assessed the shortest measurement.
- (4) A lot or parcel is a lot or parcel fronting two (2) or more streets when the angle of the extended street center line is one hundred thirty-five degrees (135°) or less, and shall be assessed as a lot or parcel on two (2) or more streets.
- (5) A lot or parcel abutting water shall be assessed on the portion of the frontage abutting the roadway.
- (6) A lot or parcel on a cul-de-sac shall be assessed the total street footage.
- (7) Where a lot or parcel configuration contains an arc, the length of the arc shall be used as street footage measurements. When an arc forms a lot or parcel corner, the center of the measured arc shall constitute the corner.
- (8) When a lot or parcel has an easement across it by any public authority, the easement shall have no bearing on the assessment. When a lot or parcel has a right-of-way across it by any public authority, the right-of-way shall be deducted from the lot or parcel dimension.
- (9) In no case shall a parcel or buildable lot be assessed less than a forty (40) front foot assessment or more than a one-hundred (100) front foot assessment.
- (10) Those lots or parcels designated as unbuildable by the Director of Planning and Zoning shall not be assessed.
- (11) Any lot or parcel reduced in size, by reason of acquisition by public authority, beyond that required by existing Zoning Ordinances for a structure to be built shall not be assessed.
- (12) Notwithstanding the provisions of (1) through (11) of this section, computed front footage measurements for any lot, parcel or building unit may be adjusted as necessary to assure that each lot, parcel or building unit is assigned a reasonable assessment, in the opinion of the County Engineer, for its responsibility in retiring debt for the improvements installed or performed pursuant to this Chapter.

- (13) In the event of irregular lots, or unusual circumstances, the front footage shall be determined by the County Engineer.

**§ 96-15. Effective Date**

This Ordinance shall become effective on the date of its adoption.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2071 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 21ST DAY OF JULY 2009.**



**ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL**