

THE BYLAWS OF THE TRUSTEES OF THE NEW CASTLE COMMON

INTRODUCTION

HISTORY OF THE NEW CASTLE COMMON AND THE TRUSTEES

The New Castle Common was created shortly after the founding of the town in 1651 by the Dutch, who set aside a large tract on the edge of what was then known as Fort Casimir for the use of its inhabitants, where they could graze livestock, harvest wood, and raise crops; this practice continued after the English, who also had a tradition of common land, conquered the colony in 1664. For about half a century the Common had no definite bounds or limits, but in 1701, during William Penn's proprietorship, the Colonial Assembly requested that he confirm the existence of the common land and order it surveyed.

Penn directed that a thousand acres be set aside for the people of New Castle; and in 1704 George Dakeyne, Deputy Surveyor of New Castle County, returned the survey, which laid out for the "Inhabitants of New Castle to lye in common for their accommodation and to their onely use and behoofe one thousand acres of Land adjoining or near to the said Town of New Castle Reputed always to be common...." In fact, the survey later proved to contain 1,068 acres.

Until 1760 the New Castle Common lay open and exposed; no person or body was charged with preserving the land, protecting the timber, or preventing encroachment on the tract -- all difficulties that constantly arose. In that year a group of responsible citizens presented a petition to the General Assembly of the "Counties of Newcastle, Kent and Sussex upon Delaware...met at Newcastle" requesting the "vesting the legal Estate in the said tract of land in certain Trustees and their Successors for the use of the Inhabitants of the Town of Newcastle forever...." On October 31, 1764, thirteen Trustees of the New Castle Common were incorporated by a charter granted by the Proprietaries, Thomas and Richard Penn, the sons of William Penn; and in 1792 the Trustees were reincorporated by a special act of the Delaware Assembly, under which they continue to operate.

Nearly 250 years later the Trustees still manage much of the original common land, together with other assets subsequently procured by the Trust, “to and for the use of the...Inhabitants of the said Town of New Castle.” As an organization they are unique in Delaware, and possibly in the United States. The term for Trustees, who are elected by majority vote, was originally for life, but has since been altered to twelve years. In order to vote in a Trustee election one must be eighteen years or older, have been resident in New Castle for at least one year, and be registered to vote in the Trustee elections, whose list is distinct from those for the City, State, and Federal elections; the Trust is completely separate from the municipal government of New Castle.

In 1792 much of the common land was divided into tenant farms, whose rental income was used for town improvement. With these funds the Trustees built the Town Hall and Market House, paved streets, erected wharves. Over the centuries they have shown a strong concern for education by establishing and subsidizing schools; the first appropriation of funds was in 1798, in order to build the New Castle Academy, and until 1875 they operated and entirely supported all the public schools of the town. Currently they fund a college scholarship program for students who are residents. Today only one of the original eleven farms survives; No. 6, known as the Penn Farm, has recently been restored by the Board of Trustees and leased to a non-profit group to manage as a green initiative, providing New Castilians access to local food and to agricultural education.

The Trust land is administered with two purposes in mind: first, the provision of open space (i.e., common land) for the benefit of New Castle citizens; second, the management of commercial rental real property to produce income for town projects such as the Library, housing for the Good-Will Fire Company, and the maintenance of Battery Park. The Trustees also fund vital projects like the repair and maintenance of dikes, wharves, and sluice gates, and on occasion assist the City Council with items like the purchase of police cars and garbage trucks. Over the years some land has been sold - the amount of land in the Trust now consists of some 600 acres - and the money thus gained has been invested in securities; these are restricted funds, to be used only for the acquisition of land or for capital projects.

Thanks to the wisdom of the original Dutch settlers and the acquiescence of Penn and his heirs, New Castle is in an enviable position: the ability of the Trustees to augment the resources of the municipal government has led New Castle to be known as an “endowed city.”

Sections from AN ACT OF THE GENERAL ASSEMBLY. Enlarging the Corporate Powers of the Trustees.1792. An Act to enlarge the Corporate Power of the Trustees of the New Castle Common.

...WHEREAS, the Inhabitants of the said Town of New Castle have heretofore been restrained in using or occupying the before described tract of land, in other manner or for other purpose than as and for a Common, which hath not been productive of benefit or advantage to the said town, equivalent to the disadvantage arising from so large a body of land lying in a waste and uncultivated state. AND WHEREAS, the trustees of the said Common, who are the organ of the said inhabitants in the disposition and management of the said tract of land, are vested with corporate powers merely adequate to the regulation and protection of the said inhabitants in the use and enjoyment of the said tract of land as a Common. AND WHEREAS, it hath been represented to the General Assembly by the said inhabitants, that the cultivation and improvement of the said tract of land, and appropriation thereof, to other purposes than as and for a Common, would redound much more to the benefit and advantage of the said inhabitants...

BE IT THEREFORE ENACTED, by the General Assembly of Delaware, that [the] trustees of the before described tract of land for the use of the Inhabitants of the Town of New Castle...shall be, one body politic and corporate, in deed and in law, to all intents and purposes, by the name, style and title of the Trustees of the New Castle Common. And that the said trustees, as a corporate body, in deed and in law, shall have perpetual succession....

AND BE IT ENACTED, that in addition to the corporate powers vested in the trustees aforesaid, as Trustees of the New Castle Common, under their existing charter of incorporation, they are hereby declared and made able and capable, in law and equity, to have, purchase, take, accept, receive, possess, enjoy and retain, to them and their successors, all that the aforesaid tract or parcel of land, with the appurtenances, and the same, or any part thereof, to grant, demise and dispose of

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for the use and behoof of the Inhabitants of the said Town of New Castle, to be appropriated in such manner as a majority of the said trustees in their wisdom may direct. *Provided always*, that they reserve to themselves, and their successors, for the benefit and use of the inhabitants of the said town, an annual or other rent, as a reasonable equivalent for the leasing or disposing of the before described tract of land, or any part or parts thereof...

AND BE IT ENACTED, That not less than seven trustees shall constitute a board for the transaction of business, and the said trustees, on the first Tuesday of March, annually, and when intermediate vacancies may happen, shall and are hereby authorized to choose one of their number as president.

AND BE IT ENACTED, That the said corporation be, and hereafter shall be capable, in law, to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in courts of law and equity, or any other place whatsoever, and to do and execute all and singular other matters and things which bodies politic or corporate lawfully may do, and also to make, have and use a common seal, and the same to break, alter and renew at their pleasure.

AND BE IT ENACTED, That the trustees of the said corporation shall be capable of exercising such powers, for the well governing and ordering the said corporation and the affairs and business thereof, and of holding such occasional meetings for that purpose, as have been or shall be fixed, described and determined by laws, regulations and ordinances of said corporation.

AND BE IT ENACTED, That the said corporation shall and may make, ordain and establish such laws, regulations and ordinances as to them shall seem necessary and convenient for the government of the said corporation. *Provided always, nevertheless*, that nothing herein contained shall be construed to authorize the said corporation to exercise any powers repugnant or contrary to the laws or constitutions of this State.

Signed by order of the House of Assembly.

The principal office of the Corporation is at:

201 Delaware Street
New Castle, Delaware 19720

The registered agent is:

Cooch and Taylor, P.A.
Attorneys at Law
3711 KENNETT PIKE | SUITE 100
GREENVILLE, DE 19807

ARTICLE I
OFFICES AND AGENTS

The Corporation will have a principal office in the City of New Castle and a registered agent.

ARTICLE II
CORPORATE SEAL

A common Seal for the corporation shall be a circular Piece of Brass of the size of a Spanish milled Dollar with the following Device to wit -- A Husbandman holding a Plough drawn by two oxen -- enclosed in a Shield crested with a Hand holding a Sickle and around the whole Device shall be inscribed in Roman Characters, "Corporation Seal of Newcastle Common."

From ms. The By Laws or Ordinances of the Corporation as adopted this day [12th September 1792].

ARTICLE III
FINANCIAL ACCOUNTS

All funds which are the property of the Corporation shall be deposited in financial accounts as may be authorized and maintained by the Corporation. All checks shall be signed by two (2) officers of the Board.

ARTICLE IV
ANNUAL STATEMENTS

Section 1

At least once a year the Board of Trustees shall cause a full and complete statement of income and disbursements to be prepared. These statements are to be in the form and detail prescribed by the Board.

Section 2

The statements prepared by the treasurer, as well as his books and records, shall be open for inspection by the Board for such examination and inspection as the Board or any member thereof shall deem necessary or desirable.

Section 3

At least once a year the Board shall authorize an audit by a certified public accountant selected by the Trustees, to result in a certified income statement and balance sheet.

ARTICLE V

ASSETS

Section 1

No part of the assets or net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members or any other private persons. The Corporation is authorized to make payments and distributions in furtherance of the purposes set forth in the Charter.

Section 2

In the event of the liquidation, dissolution, or winding up of the Corporation, the Board of Trustees shall, after paying or making provision for the payment of all of the liabilities of the Corporation, donate, transfer, and convey all of the assets and property of the Corporation to the City of New Castle, a municipal corporation of the State of Delaware.

ARTICLE VI

TRUSTEES

Section 1

Thirteen Trustees constitute the Board of Trustees and conduct the business of the Corporation.

Section 2

When vacancies occur, they shall be filled as specified in Article VI of the Procedures.

Section 3

No Trustee shall receive any compensation for services rendered; however, Trustees may be reimbursed for expenses incurred in the performance of their duties for the Corporation.

ARTICLE VII

TERM OF OFFICE

Any person elected a member of the Board of Trustees after December 4, 1979, shall serve for a term of twelve (12) years, commencing on the date of the election.

Nothing herein shall prevent a Trustee from seeking re-election for an additional term or terms of office.

ARTICLE VIII

DISCIPLINARY ACTIONS

Any member of the Board of Trustees who intentionally or unintentionally violates any article or section of these Bylaws may have charges filed against him by any other member of the Board.

ARTICLE IX

CONFLICT OF INTEREST

Any member of the Board who has a personal or private interest, either directly or indirectly, in any matter being considered at a meeting by the Board, may be counted for the purposes of a quorum, but must disclose his interest to the Trustees and cannot vote on any resolution or motion in which he has an interest.

ARTICLE X

MEETINGS OF THE BOARD OF TRUSTEES

Section 1

The Board of Trustees shall hold regular monthly meetings within the City of New Castle, Delaware, on the first Tuesday of each month, with the exception of the months of July and August, when no regular meeting shall be scheduled unless it is agreed upon during the June meeting.

Section 2

Special meetings of the Board may be held upon request of the president or the Board secretary or two Trustees.

Section 3

At all meetings of the Board, a simple majority of the Trustees shall constitute a quorum for the transaction of business. The vote of a majority of the Trustees present (at any regular meeting or at any special meeting properly called) shall cause a motion to pass. Lacking a quorum, the Trustees present may adjourn the meeting, since no business can be transacted.

Section 4

The method of voting on any motion brought before the Board is to be conducted as follows:

- A. By Voice. The Chairman asks those in favor to say “yea” or “yes,” those opposed to say “nay” or “no,” and those who abstain to say “abstain.”

- B. By Roll Call.** If any member should move for an exact count, each member is to answer “yea” (“yes”), “nay” (“no”), or “abstain” as his/her name is called. During the roll call, a Board member may give the reason for his/her vote on a particular motion.

Once all members have cast their votes and the count is completed, the president will announce the count and the final disposition of the motion.

ARTICLE XI

OFFICERS

Section 1

All officers of the Corporation shall be chosen by the Board from its members, and shall consist of a president, a vice-president, a Board secretary, and a treasurer. The Board may also choose one or more additional vice-presidents, one or more assistant Board secretaries, and/or one or more assistant treasurers. These shall hold their offices for such terms as the Board determines. No Trustee shall hold more than one office.

Section 2

The Board may appoint other officers as it deems necessary; they shall hold their offices for such terms, exercise such powers, and perform such duties as the Board determines.

Section 3

THE PRESIDENT

The president is the chief executive officer of the Corporation who presides at all meetings of the Board, has general and active management of the business of the Corporation, subject to the approval of the Board, and sees that all orders and resolutions of the Board are carried out. No person shall be eligible to serve as president for more than three (3) consecutive years; however, after a year’s hiatus, he may serve again.

Section 4

THE VICE-PRESIDENT

The vice-president -- or, if there be more than one, the vice-presidents -- shall, in the absence or disability of the president and in the order determined by the Board, perform the duties and exercise the powers of the president, together with such other duties and powers as the Board may prescribe. No person shall be eligible to serve as vice-president for more than one (1) year; however, after a year's hiatus, he may serve again.

Section 5

THE BOARD SECRETARY

The Board secretary shall ensure that all the proceedings at the Board meetings are recorded in a book to be kept for that purpose. Tape recordings may be used to assist in keeping minutes of the Board's proceedings. Once the minutes have been approved by the Board, the tapes shall be erased or reused for the next meeting. He shall perform like duties for the standing committees when required. He shall cause notice of all meetings of members of the Board to be given, and shall perform such other duties as may be prescribed by the Board. He shall have custody of the Corporation seal and authority to affix the same to any instrument requiring it; when so affixed, it must be attested to by his signature.

Section 6

THE ASSISTANT BOARD SECRETARY/SECRETARIES

The assistant Board secretary/secretaries shall, in the absence or disability of the Board secretary and in the order determined by the Board, perform the duties and exercise the powers of the Board secretary, together with such other duties and powers as the Board may prescribe.

The assistant Board secretaries shall have authority to affix the Corporation seal to any instrument requiring it; when so affixed, it must be attested to by their signature.

Section 7

THE TREASURER

The treasurer shall have custody of the corporate funds and securities, keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and deposit all moneys and other valuable effects in the name of and to the credit of the Corporation in such depositories as may be designated by the Board.

The treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the president and the Board at its regular meetings, or when the Board so requires, an account of all his transactions as treasurer and of the financial condition of the Corporation. He shall supervise the preparation of an income statement and a balance sheet for the Corporation; he shall also supervise the preparation of all tax returns required by all governmental instrumentalities and their filing in a timely manner.

If required by the Board, the treasurer and assistant treasurers shall execute and deliver to the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of their death, resignation, retirement or removal from office, of all books, papers, vouchers, money, and other property of whatever kind belonging to the Corporation that may be in their possession or under their control.

No person shall be eligible to serve as treasurer for more than three (3) successive terms.

Section 8

THE ASSISTANT TREASURER(S)

The assistant treasurer(s) shall, in the absence or disability of the treasurer and in the order determined by the Board, perform the duties and exercise the powers of the treasurer, together with such other duties and powers as the Board may prescribe.

ARTICLE XII

TRUSTEE COMMITTEES

Section 1

Committee Formation

The Board of Trustees may, by a resolution passed by a majority of the Board, designate one or more committees. Each committee, consisting of two or more Trustees, may exercise such powers as the Trustees authorize. The president is an ex-officio voting member of all committees. Each committee shall annually elect a member of the committee to serve as chairman. Committee meetings are open to all Trustees, but only committee members may vote. Each committee will set a routine time to meet each month so any Trustee interested in attending the meeting can plan accordingly.

Section 2

Limits on Financial Authority

A. Except in the case of an emergency, no Trustee shall enter into any contract or agreement binding the Trustees, unless previously authorized by the Board or by the appropriate committee.

B. No Trustee shall cause the disbursement of any Trust funds that are not previously authorized by the Board or that are not within a committee's approved budget.

C. No Trustee shall authorize the payment of any Trust funds for extras on a contract, unless permitted by the terms of the contract or by a resolution of the Board. Minor changes may be approved by a majority of the appropriate committee by telephone, email, or by meeting. The Board must approve other changes. If the committee has a question on what constitutes a "minor change," it is to refer the question to the president, who shall have the authority to decide.

D. No Trustee shall waive or delete any part of a contract entered into by the Trust unless such an action has been approved by the Board.

Section 3

Trustee Committees

The following committees are established.

1. Executive Committee.
2. Land Management Committee.
3. Finance Committee.
4. Property Maintenance Committee.
5. Outreach Committee.
6. Battery Park Committee.

ARTICLE XIII

ELECTION OF BOARD MEMBERS

Thirteen Trustees, who are voted into office by the citizens of New Castle, constitute the Board of Trustees.

Their term of office is twelve (12) years.

In order to run for Trustee of the New Castle Common a candidate must be:

- A. A qualified voter,
- B. Twenty-five (25) years of age on or before the date of the election,
- C. A resident of the City of New Castle for at least two (2) years preceding the date of the election.

**ARTICLE XIV
AMENDMENTS**

These Bylaws may be amended by the Board of Trustees at any regular meeting, provided ten (10) days' written notice have been given of the proposed amendment to the members of the Board. At that meeting, the proposed amendment may be further modified and approved.

**ARTICLE XV
CODE OF CONDUCT**

Upon selection of the Trustee to the Board, the Board Member is sworn to an Oath of *"FIDUCIARY FIDELITY TO THE TERMS, PURPOSES, AND INTENT OF THE TRUST"*. Any personal behavior of a Board Member that violates the Code of Conduct established herein; shall constitute actions **"Unbecoming A Trustee"**. This behavior shall cause disciplinary action as set forth in the adopted PROCEDURES of the Corporation.

Actions "Unbecoming A Trustee" are defined as, but are not limited to, the following:

1. Public defamation of Members of the Board - past or present.
2. Public defamation of Board resolutions passed by a vote of the Board.
3. Actions that harm the professional credibility of the Corporation by any method firsthand or via another entity.
4. Slander, libel and/or innuendo against the Corporation and/or individual Board Members - past or present.
5. Actions that cause legal defense action on behalf of the Corporation or Board Members.
6. Deliberate and offensive statements or slurs that are racial, religious or sexual in nature.
7. Manipulation or abuse of privileged information from Executive Sessions that is proprietary to the Corporation.