SPONSOR: Rep. Shupe & Rep. Longhurst & Sen. Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 459
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE CHARTER OF THE TOWN OF ELLENDALE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend the Charter of the Town of Ellendale by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 1.

The inhabitants of the Town of Ellendale, in the County of Sussex, State of Delaware, are hereby constituted a municipal corporation and body politic. The name and style of said corporation shall be "The Town of Ellendale."

The boundaries of The Town of Ellendale are hereby established and declared to be as follows:

ALL THAT certain tract, piece and parcel of land, lying and being in Sussex County, and the State of Delaware, and more particularly described as recorded at the Sussex County Recorder of Deeds ~~follows, to wit:~~

~~"BEGINNING at a set concrete monument on the easterly right-of-way line of County Route 213, at 40 feet wide, and distant the following two bearings and distances from a found P. K. nail at the intersection of the physical centerlines of Main Street (State Route 16) and Conrail:(1) North 05 degrees 00 minutes East 1,200.00 feet; and (2) North 85 degrees 00 minutes West 1,700.06 feet; thence running from said beginning point South 05 degrees 00 minutes East 2,900.07 feet to a set P. K. nail; thence running South 05 degrees 00 minutes West 2,400.00 feet to a set concrete monument; thence running North 85 degrees 00 minutes West 2,944.24 feet to a set iron pipe on the easterly right-of-way line of County Route 213, at 50 feet wide; thence proceeding along said right-of-way line of County Route 213 North 06 degrees 27 minutes East 1,196.34 feet to a point in the physical centerline of Main Street (State Route 16); thence following said centerline of Main Street North 85 degrees 08 minutes 06 seconds West 5.01 feet to a point; thence finally running with the easterly right-of-way line of County Route 213, at 40 feet wide North 05 degrees 54 minutes East 1,204.20 feet to the place of beginning, containing 160.841 acres of land, more or less~~."

General Powers

Section 2.

(A) The inhabitants of the Town of Ellendale, within the limits and boundaries referred to in Section I of this Act, or within the limits and boundaries hereafter established, shall be and they are hereby created a body politic and corporate in Law and Equity by the Corporate name of "The Town of Ellendale," hereinafter called The Town, and under that name shall have perpetual succession; may have and use a corporate seal, which may be altered, changed or renewed at pleasure; may sue and be sued, plead and be impleaded in all Courts of law and equity in the State of Delaware, and elsewhere, by said corporate name, may hold and acquire by purchase, gift, devise, lease or by condemnation real property and personal property within or without its boundaries for any municipal purposes, in fee simple or for lesser estate or interest, and may sell, lease, hold, manage and control such property as its interest may require, subject however to other sections of this Act.

As hereinafter provided in Section 20 of this Charter relating to power to issue Bonds, the Town shall have all other powers and functions requisite to or appropriate, for the government of the Town, its peace and order, its sanitation, beauty, the health, safety, convenience, comfort, and well being of its population and the protection and preservation of property, public and private; and all actions, suits, and proceedings shall be brought in the name of "The Town of Ellendale."

(B) The enumeration of particular powers by this Charter shall not be held to be exclusive, or to restrict in any manner the general powers conferred herein, but in addition to the powers enumerated herein, implied thereby, or appropriate to the exercise thereof, it is intended that the Town of Ellendale shall have, and may exercise, all powers which, under the Constitution of the State of Delaware and statutes of the State of Delaware, it be competent for this Charter specifically to enumerate. All powers of the Town of Ellendale, whether expressed or implied, shall be exercised as prescribed by this Charter, or, if not prescribed herein, by ordinance or resolution of the Town Council.

Structure ~~Of~~ of Government

Section 3.

The Government of the Town and the exercise of the powers conferred by this Charter, the Constitution of the State of Delaware and statutes of the State of Delaware, except as otherwise provided herein, shall be vested in a Town Council. The Town Council shall consist of five members who shall be citizens of the State of Delaware and residents of the said Town above the age of twenty-one years. No person shall be eligible to serve as a member of the Town Council if that person has been convicted of a crime or misdemeanor, other than those related to traffic offenses. The Town Council may, by resolution, provide for compensation to be paid to council members and officers of the Town government. 77 Del. Laws, c. 377, §1

Election In General

Section 4.

The present members of the Town Council, shall by this Act be appointed to serve and shall continue to act as ~~Councilmen~~ Councilmembers of said Town from and after the passage hereof until ~~Councilmen~~ Councilmembers are duly elected; and that at the annual election held on the first Saturday in ~~January,~~ January 1984, after the passage of this Act as provided for in Section 5 of this Act. ~~: two~~ Two (2) ~~Councilmen~~ Councilmembers shall be elected for a term of two (2) years and that at the annual election to be held the first Saturday in January 1985, three (3) ~~Councilmen~~ Councilmembers shall be elected for a term of two (2) years; and thereafter the successor of each member of the Town Council shall be elected by the qualified voters as defined in Section 5 of this Act to serve for a term of two (2) years.

Manner ~~Of~~ of Holding Elections ~~And~~ and Making Nominations

Section 5.

(A) The annual municipal elections shall be held the first Saturday in the month of January, from ~~one o'clock P.M.~~ 1:00 p.m. until ~~seven o'clock P.M.~~ 7:00 p.m., at such places as shall be determined by the Council, due notices of which shall be given by posting notices thereof in five (5) public places within the limits of the Town of Ellendale, not less than twenty 20 days before the day of the annual election. On such occasion that the first Saturday is January 1st, the Municipal Election will then fall on the Second Saturday. 77 Del. Laws, c. 377, §2

(B) Said members of the Council shall be nominated as follows, viz:

At least ten 10 days before the day of the election as hereinafter fixed, nominations shall be filed with the Secretary of the Council. Said nominations shall be in writing signed by the nominee or by five (5) other citizens of the Town, which of at least two of whom shall be ~~freeholders~~ residents, which nominations shall be presented to the Council by the said Secretary at the meeting to be held at the usual meeting place, which shall not be later than ~~eight o'clock in the evening~~ 8:00 p.m. of the last day for filing said nominations. Voting machines shall be used to record votes cast at all elections and the Council shall provide for the payment of all costs and expenses incident to their use, provided that in the event no contest exists in any election such voting machines shall not be required in such elections.

(C) Every election shall be held under the supervision of an Election Board consisting of three (3) qualified voters of said Town to be appointed for that purpose by the Council at least two (2) weeks before the election, but if at the opening of the election there shall not be present the three (3) qualified voters so appointed, or any one of them, in such case, the persons entitled to vote at such election, and then present shall appoint, by ~~viva voca~~ *viva voce* vote, a qualified voter or voters to act. The three (3) persons composing the Election Board shall be Judges of the election and shall decide upon the legality of the votes offered, keeping a list of all voters voting.

(D) At such annual election, every person, male or female, who shall have attained the age of eighteen (18) years on or before the date of the annual municipal election and who shall be a bona fide resident, of the Town of Ellendale, for a

period of six (6) months immediately preceding the date of such Annual Municipal Election, and who shall be a resident of the State of Delaware, shall have one (1) vote. The Town Council may, by Ordinance, establish a reasonable procedure for the registration of voters and, in such event, compliance therewith may be a prerequisite for voting at the election.

(E) All votes offered at the Annual Municipal Election shall be offered in person.

(F) In the event that no person files or is nominated for office for which an election is to be held within the time limit for nominations set forth herein, the incumbent shall be deemed to be reelected for a full term, and it shall not be necessary to have an election for the seat of that particular ~~Councilmen~~ Councilmember.

(G) In the event that only one person files or who is nominated for office for which an election is to be held within the time set forth hereinabove, the person who files or is nominated shall be deemed to be elected for the full term and it shall not be necessary to have an election pertaining to that ~~Councilman's~~ Councilmember's seat.

(H) In case of a tie vote for any office, the Election Board shall determine the tie by lot. 77 Del. Laws, c. 377, §3

(I) The Election Board shall enter in a Book to be provided for that purpose, minutes of the election, containing the names of the persons chosen, shall subscribe the same, and shall give to the persons elected notice of the Election, which Book, containing such minutes, shall be preserved by the Council, and shall be evidence of any Court of Law and Equity. All ballots cast and the records of the Elections shall be preserved in the custody of the Election Board

for a period of ten days.

(J) Title 15 of the Delaware Code, as it relates to Municipal Elections, shall apply to all elections of the Town. 77 Del. Laws, c. 377, §4

Organization ~~And~~ and Annual Meeting ~~Of~~ of Council

Section 6.

On the second Tuesday at 7:00 P.M., following the annual election each year, the Council shall meet and the newly elected officers shall assume the duties of office. Before entering upon the duty of their office, the newly elected members shall be sworn by a Notary Public, a Justice of the Peace or by a holdover member of the Council to faithfully and impartially perform their duties. At this annual meeting the Council shall organize and thereafter shall hold meetings at such time as hereinafter provided. 77 Del. Laws, c. 377, §5

Special Meeting, Waiver ~~Of~~ of Notice

Section 7.

Special meetings shall be called by the Secretary upon the written request of the President of Council, or upon the written request of any two (2) members of Council, stating the day, hour and place of the special meeting requested and the subject or subjects proposed to be considered thereat. The Secretary shall thereupon give written notice to the President and

to each member of Council of the day, hour and place of such special meeting and of the subject or subjects proposed to be considered thereat. Such notices of the Secretary must be deposited in the U. S. Mail in the main post office in the Town of Ellendale, at least forty-eight (48) hours prior to the time set for such special meeting, provided, however, that a written waiver of such notice, signed by the President and all other members of Council prior to or immediately upon the convening of such special meeting, shall make such forty-eight (48) hour written notice unnecessary and shall authorize and make valid the holding of a special meeting at any time named in such waiver, and the transaction of any other business at the meeting, if the waiver so states. The Secretary shall make public notice as required by Title 29, Chapter 100 of Delaware Code. The Town Council of the Town of Ellendale shall have the same power and authority to enact all ordinances, adopt all resolutions, pass all motions, make all orders and transact all business at any such special meeting, called as aforesaid, as Council has at regular meeting.

Quorum

Section 8.

In the general performance of their duties, the acts, doings and determinations of a majority of the entire Council shall be as good as the acts, doings and determinations of all of the members of Council, but if a lesser number be present at any regular or properly called special meeting, they may adjourn from time to time ~~and may compel the attendance of absent members in such manner and under such penalties~~ as may be prescribed by ordinance adopted by a majority of the entire Council. Should no ordinance exist, the Council will abide by Mason's Rules of Order. No ordinance, resolution, motion, order or other act of Council, except as immediately hereinabove provided for, shall be valid unless it received the affirmative vote of a majority of all members elected to Council.

Rules And Minutes ~~Of~~ of Council

Section 9.

The Council shall determine its own rules and order of business and shall keep a journal of its proceedings and the Yeas and Nays shall be taken upon the passage of every ordinance and ~~resolution, and~~ resolution and shall be entered in the Journal with the text of the ordinance or resolution.

Vacancies

Section 10.

In case of a vacancy created in the members of the Council either by death, resignation, loss of residence in the Town of Ellendale, or otherwise, the Council shall fill such vacancy for the remainder of the entire term. In the event of any such vacancy, a special meeting shall be called by the secretary adhering to the notice requirements hereinbefore mentioned therefor, which special meeting held for the purpose of filling such vacancy shall be held within 45 days.

Disqualification

Section 11.

If any ~~Councilman~~ Councilmember shall, during his/her term of office, lose ~~his~~ their residence in said Town, or ~~his~~ their citizenship in the State of Delaware, or be found guilty of ~~any crime or misdemeanor other than minor traffic violations~~ a felony, he/she shall forthwith be disqualified to act as a Member of Council, and ~~his~~ their office shall be deemed vacant and shall be filled by Council, as aforesaid.

Contracts With Members

Section 12.

It shall be unlawful for the said Council to make or enter into any contract for materials, supplies, work or labor for the use and benefit of the Town of Ellendale with any member of the Council or with any partnership in which any member of Council is a partner, or with any corporation in which any member of Council is a director or stockholder or with any firm or company in which any member of Council is pecuniarily interested, except with the unanimous consent of those members of the Council who have no personal pecuniary interest in the contract, and such contract shall be absolutely null and void without such unanimous consent. 71 Del. Laws, c. 388

Regular Meetings ~~Of~~ of Council

Section 13.

The Council of the Town of Ellendale shall hold regular meetings once a month at such times as may be prescribed by the ordinance and resolution at the Town Hall, or at such other suitable place in said Town as the Council may select, but in the event of a temporary change in the place of meeting, public notice shall be posted in the usual place of meeting ~~not later than seven o'clock P.M. on the evening~~ no later than one (1) hour prior to the start of the said meeting, plainly stating the new place of meeting selected by Council, and the day and hour of such meeting.

Officers

Section 14.

(A) The Council shall, at the annual meeting held on the first Tuesday next following the annual election, organize by the election of a President, Vice-President, Secretary, Treasurer and Collector of Taxes. The President and the Vice-President shall be members of the Council.

The Secretary, Treasurer, and Collector of Taxes may or may not be a member of the Town Council. The Council shall also elect and appoint any such other officers, employees and agents of the Town which by it may be deemed proper and necessary for the proper conduct and management of the Town. Any officer may be removed at any time by the Town Council for ~~sufficient~~ cause.

(B) The Council shall by ordinance ~~or ordinance~~ fix the salaries and compensation of employees, officers and agents of the Town and the time and manner of his or her payment. No officer, employee or agent of the Town shall in any form have, take, or receive from the Town any compensation in any form in addition to the salary or compensation fixed by Council. 71 Del. Laws, c. 388

(C) The Council shall cause to be kept a full and complete record of all officers appointed and employees and agents hired by the Town containing the names of such officers, employees, and agents, the dates and term of their appointment or employment, the salary or compensation and the date of the termination of service.

Duties ~~And~~ and Powers ~~Of~~ of President

(D) The duties of the President of the Council shall be to preside at all meetings of Council; to have general superintendence of municipal affairs, provided, however, that such general superintendency shall in all cases be subordinate to the authority of all committees, and appointees as selected by Council for the superintendency or conduct of any specified municipal activity, to receive complaints or nuisances and all complaints or violations of Law and Ordinances, and present the same to Council at its first meeting thereafter for action of Council. The President shall issue and sign all licenses for every exhibition within the Town, or licenses for any other purpose for which, under the Laws of Delaware, or the Ordinances of said Town, a license therefor is required.

The President may sign all warrants on the Treasurer for the payment of any Town money and shall perform such other duties as may be prescribed by resolution or ordinance of Council. If the President be incapacitated from acting by reason or absence, or for any other cause whatsoever, then all the powers and duties conferred and imposed under him/her by this Act, or any other Law, or any resolution or ordinance now or hereafter adopted or enacted by Council, shall be exercised and performed by the Member of Council chosen by Council as Vice-President for the period of such incapacity or absence.

The President shall have the same right as other ~~Councilmen~~ Councilmember to vote on all matters and may at any time appoint another ~~Councilman~~ Councilmember to preside if he/she desires to make a motion, move the adoption of a resolution, second either, or debate any question from the floor, and may thereafter immediately resume his/her duties, as presiding officer.

Secretary

~~(~~E (E) The Secretary shall record all the proceedings of the Council and keep a correct journal of the same in a book to be provided for that purpose; and shall file and keep in a safe place the Seal of the Town and all papers, and documents, relative to the affairs of the Town, and deliver the same to ~~his~~ their successor in office. The Secretary shall attest the seal of the Town when authorized by Council, and shall perform such duties and have such other powers as may

be prescribed by ordinance. All records, books, papers and documents in the custody of the Secretary shall be open for the inspection of Council and the public.

Treasurer

(F) The Treasurer shall be a citizen and resident of the said Town above the age of twenty-one (21) years at the time of his/her appointment.

The Town Treasurer, before entering upon the duties of his/her office, shall be sworn or affirmed to ~~faithfully and honestly perform the duties of his office~~ perform the duties of his/her office faithfully and honestly, which oath or affirmation shall be administered by the President or Vice-President.

The Town Treasurer, before entering upon the duties of his/her office, shall also give bond to the Town of Ellendale, with sufficient surety to be approved by Council, in the penal sum of Fifteen Thousand Dollars ($15,000.00), conditioned for the faithful discharge of the duties of his/her office.

Collector ~~Of~~ of Taxes

(G) The Collector of Taxes shall be at least of the age of twenty-one (21) years at the time of his/her appointment.

It shall be the duty of the Town Collector to collect all Town Taxes, water and sewer rents, charges for electric current and all other kinds of Town revenue and to deposit to appropriate Town account.

The Town Collector, before entering upon the duties of his/her offices, shall give bond to the Town of Ellendale, with sufficient surety to be approved by Council, in the sum of Fifteen Thousand Dollars ($15,000.00), conditioned for the faithful performance of the duties of his/her office.

(H) The Council shall commission Auditors who shall audit the accounts of the Town and all ~~of~~ its officers whose duty involves the collection, custody and payment of the moneys of the Town.

They shall audit the books and the records of all fines, penalties and costs imposed or collected, pursuant to any judgment order or decree made. The Auditors shall make and deliver a detailed report of all and every of the accounts, records and books by them examined and audited, which copies of said report under their hands and seals may be printed in a newspaper of general circulation in the Town in the issue immediately succeeding their annual report. The Auditors in the performance of their duties shall have access to all records of Council and the officers of the Town; and are authorized and empowered to employ such clerks or accountants as in their judgment may be necessary for the proper performance of their duties.

Town Solicitor

(I) The Town Council may retain a Town Solicitor who shall be a member in good standing of the Delaware State Bar and authorized to practice before all courts of the State of Delaware. It shall be the duty of the Town Solicitor, upon

request of the Mayor and/or a majority of the Town Council to give legal advice to the Council and to other officers of the Town, and to perform such other legal services as may be required of him/her by the Town Council. 71 Del. Laws, c. 388

Police Officers

(J) The Council may appoint a Police ~~force~~ Force consisting of a Chief and such members or subordinates as the Council may deem wise; and the Council shall from time to time make rules and regulations as may be necessary for the organization, government and control of the Police ~~force~~ Force. The members of the force shall be subject to the direction of the Council, and may be removed by the Council at any time. They shall preserve peace and order, and shall compel obedience within the Town limits to the ordinances of the Town and Laws of the State; and they shall have such other duties as the Council shall from time to time prescribe.

Each member of the Police ~~force~~ Force shall be vested with all powers and authority of a Constable of Sussex County, and in the case of a pursuit of an offender their powers and authority shall be without territorial limitations.

~~It shall be the duty of the police to suppress riotous disorderly or turbulent assemblages of persons in the streets of the Town, or the noisy conduct of any person in the same, and upon view of the above, or upon the view of the violation of any ordinances of the Town relating to the peace and good order thereof, the Police shall have the right and power to arrest without warrant and to take the offender before a Justice of the Peace for hearing thereon.~~

Town Clerk

(K) The Town Council of the Town of Ellendale may appoint a Town Clerk. Upon the appointment of the Town Clerk, his/her duties shall be prescribed by the Town Council. The Town Clerk may not be a member of Town Council. At the discretion of the Town Council, he/she shall give corporate bond to the Town in an amount fixed by the Town Council conditioned for the faithful performance of his/her duties, the payment to the Town Council of all money coming into his hands as Town Clerk from whatever source derived, and in the event of death, resignation or removal from office, the delivery to his/her successor of all papers, books, records and other property of the Town in his hands or under his control.

~~He~~ They may receive as compensation for his services, a salary to be fixed, from time to time, by resolution of the Town Council. ~~He~~ They shall attend all meetings of the Town Council and keep proper and adequate minutes of its acts and proceedings and keep a correct journal of the same in a book or books provided for that purpose. Said journal must show all bills approved by the Town Council, the amount of said bills and to whom payable; and he shall be in attendance at his/her office on such days and between such hours as may be directed by ordinance or resolution of the Town Council.

~~He~~ They shall keep a record of all officers, agents and employees of the Town, when elected or appointed, the terms of office or employment, if a term be fixed, and the salary or compensation thereof. ~~He~~ They shall keep the assessment books and tax records of the Town with the names of the taxpayers arranged alphabetically, showing the tax, a

short description, an assessed value, as determined by the provisions hereof, of each parcel of real estate and short description of each item of personal property assessed, if any. ~~He~~ They shall also keep and maintain proper books and records showing the names of persons charged with utility rentals or service charges and detailed accounts thereof.

Levy ~~Of~~ of Annual Taxes

Section 15.

(A) Prior to July 1st, of each year, after receiving the assessments of property situated in the Town as established by the Sussex County Board of Assessment, the Town Council shall determine, to their best judgment and knowledge, the total amount necessary to be raised by the Town to meet all fixed and anticipated expenses and obligations of the Town including reasonable and appropriate reserves, for the then current fiscal years as set forth in the Town Budget for such year plus a reasonable amount to cover unanticipated expenses and emergencies.

(B) They shall then proceed to determine, in their sole discretion, from which sources of the authorized revenues of the Town the amount so determined by them shall be raised and, within the limits prescribed by this Charter with respect to any such source, the amount to be raised from each such source.

(C) They shall then proceed to determine, assess, fix and/or levy:

1. The rate of tax on real estate per fifty dollars ($50.00) of assessed value; and/or 77 Del. Laws, c. 377

2. The rate of tax on improvements on owned real estate per fifty dollars ($50.00) of assessed value; and the value located on land under a lease, which said lease has been recorded in the Office of the Recorder of Deeds, in and for Sussex County; and/or 77 Del. Laws, c. 377, §7

3. The amount of personal or per capita tax upon each qualified voter; and/or

4. The rate or rates to be charged for furnishing services of a public nature; and/or

5. The fees or rates to be charged in respect of any other authorized source of revenue sufficient in their best judgment and estimation to realize the amount to be raised from each such source determined by them to be used.

(D) Prior to July 1st of each and every year the Town Council shall make, or cause to be made, a full, true and correct ~~annual tax list~~ Annual Tax List showing the amount of tax levied against each taxable thereon from sources mentioned above. This list shall be known as the Annual Tax List of the Town of Ellendale. In addition to the information contained in the assessment list, it shall likewise contain information as to the rate of tax upon real estate per $50 of assessed value thereof. 77 Del. Laws, c. 377, § 8

(E) The ~~Councilmen~~ Councilmembers shall cause to be delivered to the ~~Town Clerk~~ Collector of Taxes a duplicate of said ~~annual tax list~~ Annual Tax List, and the ~~Town Clerk~~ Collector of Taxes shall immediately proceed to collect the same as hereinafter provided.

(F) The Council shall also have the right to levy and collect taxes upon all telephone, telegraph, power poles, or other erections of like character erected within the limits of the Town, together with the wires and appliances thereto or thereon attached, that are now assessable and taxable, and to this end, may at any time direct the same to be included in or added to the Town Assessment. In case the owner or lessee of such poles or erections shall refuse or neglect to pay the taxes that may be levied thereon, the said taxes may be collected by the Collector of Taxes as in case of other taxes and the Council shall have authority to cause the same to be removed.

(G) Nothing contained in this Charter shall be construed to effect or impair in any way the validity of any tax, fee, assessment, or other charge lawfully levied, assessed, or due the Town of Ellendale under existing laws in reference to said Town and the same are hereby declared to be valid, binding and vested in the Town of Ellendale.

Collection ~~Of~~ of Annual Taxes

Section 16.

(A) The Treasurer or ~~Town Clerk~~ Collector of Taxes, as soon as the Councilmen shall have placed in his hands the duplicate annual tax list, shall proceed at once to collect the taxes on said duplicate list.

(B) All taxes so laid or imposed by the ~~Councilmen~~ Councilmembers of the Town of Ellendale in such ~~annual tax list~~ Annual Tax List, shall be and constitute a lien upon all the real estate of the taxable, against or upon whom such taxes are laid or imposed, of which such taxable was seized or possessed, at any time after such taxes shall have been levied and imposed, that is situated in the Town. Such lien shall have preference and priority to all other such liens on real estate or upon improvements located on land under lease, as aforesaid, created or suffered by said taxable although such other lien or liens be of a date prior to the time of the attaching of such lien for taxes.

(C) All taxes, when and as collected by the ~~Town Clerk or~~ Treasurer or Collector of Taxes shall be paid to the Treasurer of the Town, and all taxes shall be due and payable at and from the time of the delivery of the tax list to the Town Clerk or Treasurer.

(D) On all taxes paid after the first day of June next succeeding the delivery of the annual duplicate tax list to the Town Clerk, there shall be added an amount ~~equal to one (1%) per centum per month~~ prescribed by the fee schedule for each and every month such taxes shall remain unpaid and shall be collected in the same manner as the original amount of the tax.

(E) ~~if~~ If the ~~collector~~ Collector of Taxes shall be unable, within one year of the date of the delivery of the duplicate ~~annual tax list~~ Annual Tax List to him/her, to collect the tax of any taxable, he/she is authorized and empowered, to collect such tax from such taxable by any of the processes of law.

(F) The provisions of this Section 16 shall apply to all special ad valorem taxes and special taxes levied by the Town Council pursuant to Section 18(A)(42) of this Charter, provided that all references in this Section 16 to an annual tax list shall, for all purposes relating to such special ad valorem taxes and special taxes, be deemed to refer to the tax list showing the amounts of special ad valorem taxes or special taxes levied against the real property within a special development district.

Remedies, Powers ~~And~~ and Methods For The Collection ~~Of~~ of Taxes, Assessments ~~And~~ and Other Charges Due The Town

Section 17.

The following remedies are cumulative and, if two or more proceedings are pending to recover the amount due for taxes upon the same property for any year, neither proceeding shall be placed in a bar or in suspension of other proceedings, although when the full amount due for taxes upon the property for the year shall have been fully paid to the Town in any proceeding, together with all costs in all proceedings then pending, the ~~town~~ Town shall enter upon the records thereof discontinuances thereof:

(A) A remedy by distress as now prescribed by law is hereby preserved to the Town Clerk for the collection of any taxes, assessments, fees, warrants, or other charges for which the taxable may be liable to the Town.

(B) At any time after the delivery of the duplicate ~~annual tax list~~ Annual Tax List or warrant, or any other list of charges due the Town of Ellendale, the Town Clerk may with the approval of and in the name of the Town Council institute suit before any Justice of the Peace or Court of The State of Delaware, in any of the Counties of the State, for the recovery of the unpaid tax, assessment, fee, or other charge, in an action of debt, and upon judgment obtained, may issue Writs of Execution as in case of other judgments recovered before a Justice of the Peace. The action shall be brought in the name of the Receiver of Taxes and Town Treasurer for the Town of Ellendale." The said execution shall constitute a lien upon all of the personal property of the taxable within the County where the judgment shall have been obtained, which lien shall have preference and priority to all other liens on the personal property created or suffered by the taxable, although such other lien or liens be of a date prior to the time of the attachment of such lien for taxes.

(C) At any time after the delivery of the ~~tax list~~ Annual Tax List and warrant, the Collector of Taxes may notify, in writing the person, firm, or corporation by whom any taxable is employed that the tax of said employee is due and unpaid. The notice shall be signed by the president of the Council and shall contain the correct name of the taxable as it appears upon the ~~tax list~~ Annual Tax List, the amount of the tax due and the penalty added, if any, and thereupon it shall be the duty of the employer to take from the wage, salary, or other money then due the taxable, the amount of the tax due and owing from the employee, and charge the same against him/her and to pay the same to the Collector of Taxes within ten (10) days.

The Collector of Taxes shall give to the employer a Certificate of Payment which shall be allowed in any suit or accounting between the employer and the taxable. If any employer, being notified as aforesaid, and having in his/her hands money belonging to the taxable, shall neglect or refuse to comply with the provisions hereof, such employer shall become personally liable for the amount of the tax of the persons as to whom notice was given, and the amount thereof may be recovered from such employer in any action of debt before any Justice of the Peace, as aforesaid. This process shall be deemed to be in ~~the nature of~~ a garnishment proceeding.

(D) For the purpose of collecting the tax of any taxable, and without the necessity of first employing the remedies herein provided, the Collector of Taxes is empowered to sell the lands and tenements of a taxable, or the lands and tenements of a taxable alienated subsequent to the levy of the tax. The rights of the Town to conduct such a sale, as well as the procedures to be followed for the holding of such a sale, shall be the same in every manner as those rights available and those procedures specified for the sale of land for the collection of taxes on the part of the individuals charged with the responsibility for the collection of taxes for Sussex County, and all such procedures and method available for the sale of land, as aforesaid, as they are presently enacted and hereafter amended, are included herein and made a part thereof by reference thereto, including the method of sale by monition, as the same is set forth in the statutes made and provided, substituting the Town of Ellendale for Sussex County therein.

(E) ~~Attorneys~~ Attorney Fees and Costs of Collection. In addition to the amounts owed to the Town for taxes, assessments and other charges, and in addition to the late payment penalties ~~of one percent (1%) per month~~ as prescribed ~~in Section 16(D)~~ by the fee schedule, the ~~Town Clerk~~ Collector of Taxes shall also be entitled to recover from the taxable or from proceeds of any attachment or sale of property to collect such amounts due the ~~town~~ Town, any amount necessary to reimburse the Town for its documented out-of-pocket expenditures incurred in connection with effecting such collection, including but not limited to court filing fees, Sheriff's costs, sale costs, advertising and photocopy costs, and reasonable attorney fees. 71 Del. Laws, c. 388

(F) The provisions of this Section 17 shall apply to all special ad valorem taxes and special taxes levied by the Town Council pursuant to Section 18(A)(42) of this Charter, provided that all references in this Section 17 to an annual tax list shall, for all purposes relating to such special ad valorem taxes and special taxes, be deemed to refer to the tax list showing the amounts of special ad valorem taxes or special taxes levied against the real property within a special development district.

Enumeration ~~Of~~ of Powers

Section 18.

(A) Not by way of limitation upon the power vested in the ~~Councilmen~~ Councilmembers to exercise all powers delegated by this Charter to the municipal corporation of the Town of Ellendale except as may expressly appear herein to the contrary, but, rather by way of enumeration and for purposes of clarity, the ~~Councilmen~~ Councilmembers are vested by this Charter with the following powers, be exercised by said ~~Councilmen~~ Councilmembers in the interest of good government and the safety, health, and welfare of the Town, its inhabitants and affairs, that is to say:

~~(1) To prevent vice, drunkenness and immorality.~~

~~(2)~~ (1) To provide for and preserve the health, peace, safety, cleanliness, ornament and good order of the Town and its inhabitants.

~~(3) To prohibit all gaming and fraudulent devices.~~

~~(4)~~ (2) To prohibit, restrain, license or regulate all public sports, exhibitions, shows, parades, productions, circuses or other public performances, amusements, and games.

~~(5)~~ (3) To ascertain, locate, lay out, establish, open, change, alter, widen, abandon, regulate the use and enjoyment of, prevent or remove any obstruction of, level, grade, flag, dress, macadamize, pave, gravel, shell, improve, dredge, erect, remove, repair, or replace any new or present street, highway, lane, alley, watercourse, park, lake, strand, crosswalk, wharf, dock, sewer, drain, aqueduct or pipeline, or portion thereof, or any new or present sidewalk, curb, or gutter, or portion thereof, in the Town; to specify the grade thereof, the materials to be used in the doing thereof and the manner in which the same shall be done; and to enter into contracts or agreements for the doing thereof, including contracts or agreements with the State Highway of the State of Delaware for the permanent maintenance, repair and upkeep of any street, alley, lane, roadway or other highway within the Town.

~~(6) To regulate or control the observance of the Sabbath Day.~~

~~(7)~~ (4) To establish and regulate pounds and to restrain, prohibit and impound any domestic or wild animal, beast, bird or fowl running at large, and to authorize the destruction of the same and to impose taxes on the owners of dogs.

~~(8)~~ (5) To locate, regulate, license, restrain or require the removal of slaughter houses, wash houses, laundries, canning establishments, phosphate, fish, fertilizer, or manure plants or establishments, swine pens, privies, water closets, and any businesses or buildings or conditions detrimental to the public health or constituting a public nuisance or of an offensive or noxious nature.

~~(9)~~ (6) To enforce the removal of snow, ice, dirt or other ~~foreign substance~~ debris from sidewalks and gutters by owners or abutting owners.

~~(10)~~ (7) To prohibit, remove, or regulate the erection and maintenance of, any stoop, step, platform, bay window, cellar door, gate, area, descent, sign, post, or any other erection or projection in, over, upon or under any street, highway,

alley, lane, watercourse, park, lake, strand, sidewalk, cross walk, wharf, dock, sewer, drain, aqueduct, or pipeline of the Town.

~~(11)~~ (8) To define, prevent, abate or remove nuisances, obstructions or any condition detrimental to the public safety, health or welfare.

~~(12)~~ (9) To provide an ample supply of pure water for the Town and its inhabitants and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control and dispose of wells, reservoirs, pumps, machines, stations, tanks, standpipes, water mains, fire hydrants and all other equipment, property or rights used in and about the collection, storage, purification, conveyance, distribution or sale of water; to regulate and prescribe for what private or public purposes the water furnished by the municipal corporation may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the water system or equipment of the town; to furnish, or refuse to furnish, water from the Town system to places and properties outside the Town limits; and to contract for and purchase water and distribute same to users within or without the Town with the same full powers as though such water had been initially reduced to usefulness by the municipal corporation itself.

For all purposes of this Charter the word "user" when referring to the users of either the public water system or the public sewer system shall be deemed to mean either the owner to whom the real estate is assessed or a leaseholder who holds land under a valid lease for a term of not less than ten (10) years and whose lease is of record in the Office of the Recorder of Deeds, in and for Sussex County, and who has erected upon the leasehold an improvement having an assessed valuation of at least One Thousand Dollars ($1,000.00).

~~(13)~~ (10) To provide, construct, extend, maintain, manage and control a sewer system and/or a sewage treatment and disposal plant and facilities for the health, sanitation and convenience of the inhabitants of the Town; to regulate and prescribe for what private or public purposes the system may be used, the manner of its use, the amounts to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury or damage to, or interference with the said system, plant or facilities; to furnish or refuse to furnish, sewer disposal service from the Town system to places and properties outside the Town limits; in the interest of the public's health, to compel any and all properties in the Town to be connected to the sewer system of the Town; and to contract for and purchase sewer disposal service and to resell the same to users within or without the Town with the same full powers as though such service had been initially provided by the facilities therefor of the municipal corporation itself.

~~(14)~~ (11) To provide, construct, extend, maintain, manage and control a plant and system, or plants and systems, for the generating, manufacturing and distributing of electric current or gas, or both, to the inhabitants of the Town and for

lighting the streets, highways, lanes, alleys, watercourses, parks, lakes, strands, sidewalks, crosswalks, wharves, docks, public buildings or other public places of the Town, and to this end to acquire, lease, erect, construct, maintain, operate, extend, enlarge, renew, replace, control, and dispose of transmission and distribution lines, pipes, mains and other conveyances for any such current or gas as may be necessary properly to light the Town, and to furnish proper connections for electric current and gas to the properties of the inhabitants of the Town who may desire the same; to regulate and prescribe for what private or public purpose the current or gas furnished by the municipal corporation may be used, the manner of its use, the amount to be paid by the users thereof, the means whereby such amounts shall be collected and the fines or penalties, or both, for any willful or negligent injury or damage to or interference with the electric or gas system or systems of the Town; to furnish or refuse to furnish, electric current or gas from the Town's system or systems to places and properties outside the Town limits; and to contract for and purchase electric current or gas and distribute the same to users within or without the Town with the same full powers as though such current or gas had been initially reduced to usefulness by the municipal corporation itself.

~~(15)~~ (12) To fully control within the Town the drainage of all water and, to that end, to alter or change the course and direction of any natural water course, runs or rivulet within the Town, to regulate, maintain, clean and keep the same open, clean and unobstructed, and to provide, construct, extend, maintain, manage and control a surface water drainage system and facilities for the health, sanitation and convenience of the inhabitants of the Town.

~~(16)~~ (13) To provide, construct, extend, maintain, manage and control jetties, bulkheads, embankments, flood gates, piers, boardwalks, or fills for the preservation of any strand or high land within the limits of the Town or contiguous thereto, to the end that the same may be preserved, property protected and the general public might enjoy the use thereof.

~~(17)~~ (14) To grant franchises or licenses to any responsible person, firm association or corporation, for such period of time, upon such terms, restrictions, stipulations and conditions and for such considerations as the ~~Councilmen~~ Councilmembers shall deem wise, to use the present and future streets, highways, lanes, alleys, watercourses, parks, lakes, strands, sidewalks, crosswalks, wharves, docks and other public places of the Town for the purpose of furnishing heat, light, power, gas, water, sewer, drainage, electric current, telephone, telegraph, railroad, excepting railroads or railways engaged in interstate commerce, bus, taxi or other transportation, carrier or public service to the Town and to the persons, firms, or corporations residing or located therein and for the purpose of transmitting the same from or through the Town to points outside the limits thereof, and for the purpose of erecting wharves and piers, and for the purpose of vending any article of merchandise or service upon, or from any vehicle upon, any such present and future street, highway, lane,alley, etc.; provided, that no exclusive franchise or license shall be granted for any such purpose to any person, firm, association or corporation whomsoever.

~~(18)~~ (15) To regulate and control the exercise of any license or franchise mentioned in Section 18 (17) of this Charter or intended so to be.

~~(19)~~ (16) To direct, regulate and control the planting, rearing, treatment and preserving of ornamental shade trees in the streets, highways, avenues, parks and grounds of the Town and to authorize or prohibit the removal or destruction of said trees.

~~(20)~~ (17) To direct the digging down, draining, filling up, cleaning cutting or fencing of lots, tracts, pieces or parcels of ground in the Town which may be deemed dangerous or unwholesome or necessary to carry out any improvements authorized by this Charter.

~~(21)~~ (18) To provide for or regulate the numbering of houses and lots on the streets, and the naming of streets and avenues.

~~(22)~~ (19) To regulate, control or prevent the use or storage of gunpowder, fireworks, tar, pitch, resin and all other combustible materials and the use of candles, lamps and other lights in stores, shops, stables and other places; to suppress, remove, or secure any fireplace, stove, chimney, oven, broiler, or other apparatus which may be dangerous in causing fire,

~~(23)~~ (20) For the prevention of fire and the preservation of the beauty of the Town, to regulate and control the manner of building or removal of dwelling houses and other buildings; to establish a code for the same and to provide for the granting of permits for the same; to establish a building line for buildings to be erected; zone or district the Town and make particular provisions for particular zones or districts with regard to building or building materials; and, generally to exercise all the powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 Revised Code of Delaware, 1974, and all amendments thereto.

~~(24)~~ (21) To acquire, build, erect and maintain a suitable place as a lock-up or jail for the Town, which shall be used as a place of detention for persons convicted of violation of law or ordinances for a reasonable time, in cases of necessity, prior to hearing and trial and to provide for the restraint, support and employment of paupers, beggars and vagrants; provided, that the jails of Sussex County may be used for any such purpose, in which event the Town shall pay for the board of persons committed thereto for violations of ordinances of the Town which are not violations of any general law of the State.

~~(25)~~ (22) To acquire, build, erect and maintain buildings and facilities necessary or required for housing and equipping offices of the Town.

~~(26)~~ (23) To regulate or prevent the use of guns, airguns, spring guns, pistols, sling shots, beanshooters, and any other devices for discharging missiles which might cause bodily harm or injury to property; and to regulate or prevent the use of fireworks, bombs, and detonating works of all kinds.

~~(27)~~ (24) To provide for the punishment of a violation of any ordinance of the Town by fine or imprisonment, or both, not exceeding ~~One~~ Five Hundred Dollars ~~($100.00)~~ ($500.00) or thirty days, and for working any person sentenced to such imprisonment or any person who shall refuse to so work when ordered.

~~(28)~~ (25) To provide for the organization ~~for~~ of a municipal or volunteer fire department and the control and government thereof; to establish fire limits and do all things necessary for the prevention or extinguishment of fires; and, in their discretion, to contribute, donate or give an amount or amounts, not to exceed in the total during any given fiscal year three per centum (3%) of the total levied on real estate, unto any Volunteer Fire Company or Companies incorporated under the Laws of Delaware, or any Volunteer Fire Association or Associations maintaining and, operating fire fighting equipment and service to the Town; provided that any such contribution, donation or gift may be made subject to such conditions and stipulations as to the use thereof as the Councilmen shall deem advisable.

~~(29)~~ (26) To purchase, take and hold real and personal property when sold for any delinquent tax, assessment, water rent, electric bill, gas bill, license fee, tapping fee, charge growing out of abatement of nuisances and the like, laying out and repairing sidewalks, or other charge due the Town and to sell the same.

~~(30)~~ (27) To levy and collect taxes for any and all municipal purposes upon all real estate within the Town, except lands belonging to the Town~~; provided that the amount to be raised in any one year from this source shall not exceed Fifty Thousand dollars ($50,000)~~. 71 Del. Laws, c. 388

~~(31) To levy and collect a personal or per capita tax upon all persons otherwise qualified to vote at any annual municipal election to be used for any and all municipal purposes and not to exceed the sum of Ten Dollars ($10.00) in any one year for each such person.~~

~~(32)~~ (28) To levy and collect taxes upon all telephone, telegraph, power poles, pipe lines, rail lines, or other constructions or erections of a like character erected within the limits of the Town, together with the wire or other appliances thereto or thereon attached; expressly excepting all telephone, telegraph, power lines, or poles and rail lines owned or operated by any railroad or railway company engaged in interstate commerce, for any and all purposes, and to this end may at any time direct the same to be included in or added to the Town assessment. In case the owner or lessee of such constructions or erections, wires or other appliances shall refuse or neglect to pay the taxes levied thereon, in addition to the remedies for the collection thereof set forth in Section 17 of this Charter, the ~~Councilmen~~ Councilmembers shall have authority to cause the same to be removed.

~~(33)~~ (29) To license, tax and collect fees annually for any and all municipal purposes (including the cost and expense of advertising in the Town) of such various amounts as the ~~Councilmen~~ Councilmembers from time to time shall fix, from any individual, firm, association or corporation carrying on or practicing any business, profession, or occupation

within the limits of the Town; provided, however, that nothing herein shall be so construed as to make it mandatory upon any resident of the State to apply for a license in order to sell in the Town any farm produce or products grown upon a farm owned by the vendor or any member of his/her family with whom he/she resides.

~~(34)~~ (30) To determine from which authorized source and in what proportions taxes shall be levied and used each year to raise the revenue or funds required to meet the general expenses of the municipal corporation and all funding, amortization and interest requirements on its outstanding bonds or other indebtedness.

~~(35)~~ (31) To provide for the collection of and disbursement of all monies to which the Town may become entitled by law, including licenses and fines, where no provision for the collection and disbursement thereof is otherwise provided in the Charter.

~~(36)~~ (32) To accept from any authorized agency of the State or Federal Government, or from persons, firms or corporations, grants, or contributions for the planning, construction, acquisition, lease, reconstruction, improvement, betterment, or extension or operation and maintenance of any sewerage or water system and enter into agreements with such agency respecting such loans and grants, as well as to enter into and perform a contract or contracts with any person, municipality, or agency of the State or Federal Government for the sale, purchase, treatment, purification, transmission, or distribution of water.

~~(37)~~ (33) To acquire, and/or to vacate the use of, lands, tenements, personalty, easements, rightsof-way, or other interest in property, either within or without the limits of the Town, by way of condemnation and eminent domain, for any proper and lawful municipal purpose or whenever required properly to carry out, exercise or fulfill any power conferred upon or delegated to the municipal corporation by the Charter. Proceedings by way of condemnation in any such case shall be the same as prescribed hereafter in Section 24 of the Charter for the opening and laying out of new streets or the vacating or abandoning of old streets and the resolutions referred to in said Section 24 shall be changed and modified to cover any case contemplated hereby.

~~(38)~~ (34) To appropriate money to pay the debts, liabilities and expenditures of the Town, or any part or item thereof, from any fund applicable thereto, and to transfer temporarily money from one fund to another fund of the Town in case of emergency.

~~(39)~~ (35) To provide for the payment of any tax, fine, penalty, license, forfeiture, assessment, fee, charge or other amount due the Town by the performance of labor or service for the Town by any person owing the same.

~~(40)~~ (36) To inquire into and investigate the conduct of any office, officer, agent, or employee of the Town or any municipal affair and for any such purpose or purposes may subpoena witnesses, administer oaths or affirmations, and compel the attendance of witnesses and production of books, papers or other evidence by summary process.

~~(41)~~ (37) To make, adopt and establish all such ordinances, regulations, rules and by-laws, not contrary to the laws of this State and the United States, as the ~~Councilmen~~ Councilmembers may deem necessary to carry into effect any of the provisions of this Charter or any other law of the State relating generally to municipal corporations or which they may deem proper and necessary for the good government of the Town, the protection and preservation of persons and property and of the public health and welfare of the Town and its inhabitants;provided, that any ordinance relating to the public health of the Town and its inhabitants, or designed to prevent the introduction or spread of infectious or contagious diseases, or to prevent nuisances affecting the same shall apply not only within the corporate limits of the Town but as well to all areas and persons outside the Town within one mile from said limits.

~~(42)~~ (38) To establish, by ordinance duly adopted in accordance with this Charter, a pension plan or a health and welfare plan, or both, for the employees of the Town under such terms and conditions as the Councilmen, in their discretion, deem most appropriate, provided, however, that any annual appropriation which is made by the Councilmen under any such pension plan or any health and welfare plan, or both, shall not exceed a maximum of Fifteen per cent (15%) of the total annual payroll of the Town, and provided, further, that the method of funding may, if deemed advisable by the Councilmen, be accomplished through an insurance company licensed by the State of Delaware or authorized to do business in this State and approved by a majority of the ~~Councilmen~~ Councilmembers.

~~(43)~~ (39) To borrow money in anticipation of the issuance of bonds on the full faith and credit of the Town a sum not exceeding 25% of the assessed value of real property within the Town of Ellendale in any one year when, in the opinion of the majority of the ~~Councilmen~~ Councilmembers, the needs of the Town require it. Any sum so borrowed shall be secured by promissory notes of the Town duly authorized by a Resolution adopted by the ~~Councilmen~~ Councilmembers and signed by the President of the Town Council of Ellendale and attested by the Secretary of the Town Council of Ellendale with the corporate seal affixed and no officer or councilman shall be liable for the payments of such notes because they are signed by them as officers of the Town and are authorized by the Resolution of the Councilmen of Ellendale; PROVIDED, HOWEVER, that the total sum outstanding at any one time shall not exceed 25% of the assessed value of real property within the Town of Ellendale; and PROVIDED FURTHER, that any sum of money so borrowed, as aforesaid, in any fiscal year shall be paid from the general fund of the Town and shall be completely repaid at any time but must be completely paid at the end of ten (10) fiscal years following the first fiscal year when said sum or sums were borrowed with interest thereon; AND PROVIDED FURTHER, that such ad valorem taxes shall be levied as are necessary to pay the principal of and interest on said bonds as is required without regard to any other limitation concerning the maximum rate of taxation and such notes and the interest thereon shall be exempt from all taxation by the State of Delaware or by any political subdivision, agency or subdivision thereof. 77 Del. Laws, c. 377, §9

~~(44)~~ (40) To exercise all other powers vested in ~~towns~~ Towns and municipalities in the State of Delaware, generally, which powers are granted to such entities by the Delaware General Assembly, as well as such powers which may be granted to such entities by the General Assembly in the future, which powers are not denied to said entities by the Constitution or any Statute in effect.

~~(45)~~ (41) To impose upon new development or construction, upon first time occupancy of new construction, or upon annexed property such "impact fees" as are reasonably calculated to recover the cost of installing, enlarging, improving or expanding public or municipal improvements which have a rational nexus to such new construction, including but not limited to, sewer, water, roads, parking, and/or police, municipal or volunteer fire or ambulance services within the Town. 75 Del. Laws, c. 259

(42) (a) In addition to all other powers the Town Council may have, and notwithstanding any limitation of law, the Town Council shall have all powers and may undertake all actions for the purposes set forth in, and in accordance with Title 22 of the Delaware Code, Chapter 17, relating to the Municipal Tax Increment Financing Act, and Chapter 18 relating to Special Development Districts.

(b) Bonds issued under this Section 18(A)(42) of this Charter are nonrecourse to property owners who purchase property in a special development district and a tax increment financing district created under Chapters 17 and 18 of Title 22 of the Delaware Code. Property owners who purchase property in these districts shall only be responsible for the payment of ad valorem real property taxes and special taxes levied by the Town Council pursuant to Chapters 17 and 18 of Title 22 of the Delaware Code.

(c) All provisions of this Section 18 and Sections 20A and 20B of this Charter, and any other section of this Charter, limiting the amounts of indebtedness to be incurred or taxes to be levied by the Town Council shall not apply to any indebtedness incurred or any special ad valorem taxes, special taxes or ad valorem taxes levied pursuant to or in connection with this Section 18(A)(42).

Use ~~Of~~ of Town Money

Section 19.

The Town Council of said Town shall have full power and authority to use the money in the Treasury of said Town or any portion thereof, from time to time, for the improvement, benefit, protection, ornament and best interest of the said Town, as Council may deem proper, and to use Town money to accomplish and carry into effect all acts and things which it has power to do by virtue of the Laws of Delaware, this Act and all lawful ordinances and resolutions of Council. In the general performance of its duties and particularly in the expenditure of moneys of the said Town, the acts, doings and determinations of a majority of the entire Council shall be as good as the acts, doings and determinations of all of the

members of Council. In case of the absence or other incapacity of ~~Councilmen~~ Councilmembers, or in case of a vacancy or vacancies in Council, the remaining members, providing they constitute a majority of the entire Council, may conduct regular meetings and preside over hearings as specified herein and conduct all other necessary business, but no funds of the said Town shall be used for any purpose without the affirmative action of a majority of all members elected to Council.

Borrowing ~~Of~~ of Money ~~And~~ and Issuance ~~Of~~ of Bonds

Section 20A.

Short Term Borrowings by Town Council Without Voter Approval. The Town Council shall have the power to borrow money on the full faith and credit of the ~~town~~ Town, from time to time, without approval of the voters and without regard to the provisions of Section 20B of this Charter, such sum or sums not exceeding in the aggregate ~~Sixty~~ One Hundred Thousand dollars ~~($60,000)~~ ($100,000) for general purposes when in the opinion of the majority of the Town ~~council~~ Council elected, the needs of the Town require it; provided, however, that any new borrowings under this Section 20A made after the effective date of this act shall, by their terms, be repayable in full within six (6) years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by Resolution of the Town Council and signed by the Mayor and attested by the Secretary of the Town Council with the ~~town~~ Town seal affixed. No Council member shall be liable for the payment of any such note or any other evidence of indebtedness because it is signed by him/her as a Council member, provided that he/she is so authorized by Resolution of Town Council. Such notes or evidences of indebtedness and the interest thereon shall be exempt from all taxation by the State of Delaware, its agencies and political subdivisions. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town and/or from the proceeds of any grant or gift to the Town unless restricted by the terms of such grant or gift. The aggregate amount of outstanding principal from any such borrowing or borrowings under this §20A shall at no time exceed the sum of ~~Sixty~~ One Hundred Thousand dollars ~~($60,000)~~ ($100,000). 77 Del. Laws, c. 377, §10

Section 20B.

(1) The Council of the Town of Ellendale may borrow money and issue bonds or certificates of indebtedness to secure the repayment thereof on the faith and credit of the Town of Ellendale or such other security or securities as the ~~Councilmen~~ Councilmembers shall elect for the payment of principal thereof and interest due thereon.

(B) (2) All bond or other kinds or forms of certificate or certificates of indebtedness issued by the ~~Councilmen~~ Councilmembers of The Town pursuant to the provisions of this section shall be exempt from all State, county or municipal taxes.

(3) The power or authority to borrow money may be exercised by the ~~Councilmen~~ Councilmembers of The Town of Ellendale to provide funds for, or to provide for the payment of, any of the following objects and purposes: (1) refunding any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein; (2) meeting or defraying current operating expenses of the Town; (3) erecting, extending, enlarging, maintaining, and repairing any plant, building, machinery or equipment for the manufacture, supplying or distribution of gas, water, electricity, sewerage or drainage system, or any of them, and the condemning or purchasing of any lands, easements and rights-of-way which may be required therefor; (4) constructing, paving, laying-out, widening, extending, repairing and maintaining streets, lanes, alleys and ways and the paving, constructing, laying-out, widening, extending, repairing and maintaining of curbing and gutters along the same and the condemning or purchasing of any lands, easements or rights-of-way which may be required therefor; (5) constructing, laying-out, widening, extending, and repairing sidewalks, crosswalks, or embankments, or any of them and the condemning or purchasing of any lands, easements or rights-of-way which may be required therefor; (6) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter.

(4) The ~~Councilmen~~ Councilmembers shall adopt a resolution proposing unto the electors of the Town by resolution that an amount of money shall be borrowed for any of the above purposes. The resolution shall state the amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing the same, and other pertinent facts relating to the loan which are deemed pertinent by the ~~Councilmen~~ Councilmembers of the Town of Ellendale and in their possession, and shall fix the time and place for a public hearing on said resolution.

(5) Notice of the time and place of the hearing on the resolution authorizing said loan shall be printed in a newspaper having a general circulation in the Town of Ellendale at least one week before the time fixed for the public hearing.

(6) After the public hearing, a second resolution may then be passed by the ~~Councilmen~~ Councilmembers of The Town of Ellendale ordering a Special Election to be held not less than thirty days and no more than sixty days after said public hearing to borrow the said money for the purpose of voting for or against the proposed loan. The passing of the second resolution calling the Special Election shall, ipso facto, be considered the determination of the ~~Councilmen~~ Councilmembers of The Town of Ellendale to proceed in the matter in issue.

(7) The notice of the time and place of holding the said Special Election shall be printed in two issues of a newspaper having a general circulation in the Town of Ellendale within thirty days prior to the date of the said Special Election.

(8) At the said Special Election, every owner or leaseholder, as defined in this Charter, of property, whether an individual, partnership or corporation, shall have one vote and every person who is a bona fide resident of the Town of Ellendale, but who is not an owner or leaseholder, as defined in this Charter, of property within the corporate limits of the Town of Ellendale, and who would be entitled at the time of holding of the said Special Election to register and vote in the Annual Municipal Election if such Annual Municipal Election were held on the day of the Special Election shall have one vote whether or not such person be registered to vote in the Annual Municipal Election.

(9) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines which shall have the following designations:

[ ] For the proposed borrowing

[ ] Against the proposed borrowing

The voter shall be instructed to mark the box for which ~~be~~ he/she casts his/her vote.

(10) In the event that an individual holds a power of attorney duly executed and acknowledged of another person or of a firm or corporation specifically authorizing the said individual to vote at the said Special Election, a duly authenticated copy of which has been filed in the Office of the Town Clerk of the Town of Ellendale, such individual shall be entitled to cast the vote of said person, firm or corporation.

(11) The President of the Town Council shall appoint a Board of Special Election, whose members shall have the same qualifications as provided in this Charter in the case of the Board of Elections of an Annual Municipal Election of the Town of Ellendale.

(12) The polling places shall be opened from eleven o'clock (11:00) in the morning, prevailing time, until seven o'clock (7:00) in the evening, prevailing time, on the date set for the Special Election, Persons in the polling place at 7:00 in the evening shall be entitled to vote even though such votes may be cast after 7:00 in the evening.

(13) Immediately upon the closing of the polling places, the Board of Special Election shall count the ballots for and against the proposed borrowing and shall announce the result thereof and shall make a certificate under their hands of the number of votes cast for and the number of votes cast against the proposed borrowing and the number of void votes and shall deliver such certificate in duplicate, to the ~~Councilmen~~ Councilmembers of The Town of Ellendale. The said certificate shall be filed with the papers of the Town Council.

(14) The form of the bonds or certificates of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable feature, the denomination and the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council of The Town of Ellendale after said Special Election.

(15) The faith and credit of the Town of Ellendale shall be deemed to be pledged for the due payment of the bonds and the interest thereon issued under the provisions hereon when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

(16) The bonds may be sold at either public or private sale. If it is determined to sell the said bonds at public sale, the bonds shall be offered for sale to the best and most responsible bidder therefor after advertisement in the newspaper having a general circulation in the Town of Ellendale, and otherwise if the ~~Councilmen~~ Councilmembers of The Town shall deem it advisable for at least fifteen days before offering the same for sale.

(17) In no event shall the indebtedness of the Town of Ellendale authorized by this section at any one time exceed in the aggregate twenty-five percent of the assessed valuation of all real property situate within the corporate limits of the Town of Ellendale and subject to assessment for the purpose of levying the annual tax as provided in this Charter. 71 Del. Laws, c. 388

EXEMPTION OF PROPERTY FROM TAXATION

Section 21.

The Town Council of ~~said~~ Town shall have power by an ordinance, or by a resolution, to relieve, release, exonerate and exempt the real or personal property, or both, of any person, firm, association or corporation used in any manufacturing business within the limits of said Town and employing no less than six persons; and the real, or personal property, or both, of any person, firm, association or corporation used in the manufacture or distribution or both, of water, gas, electric current or other service or commodity deemed desirable or necessary for the best interest of the inhabitants of said Town, and the real or personal property, or both, held, owned, leased, or employed by any person, firm, association or corporation with whom Council may now or in the future have a contract for the furnishing to said Town and its inhabitants of electric current, light, power, heat, water or any or all of them over which Council has power or authority and from the payment of the same. No property shall be exempt from taxation aforesaid until such an ordinance is enacted or such a special resolution adopted and the period of such exemption shall be only such as is set forth in said ordinance or resolution, and shall not be in excess of ten years, and shall only be revocable upon the breach of a condition contained in such ordinance or resolution. The Town Council may by an ordinance or by a resolution, exempt from property taxation those qualified citizens who are exempt as established by law.

Town Budget

Section 22.

(A) The fiscal year for the Town of Ellendale shall be January 1, through December 31.

(B) Annually each year and not later than the last week in June the Town Clerk and the Treasurer may prepare a rough draft of a Town Budget. From this rough draft the Town Council may not later than July 31, of each year, prepare the Town Budget, containing the financial plan for conducting the affairs of the Town for the ensuing fiscal year.

(C) The Budget ~~may~~ must contain the following information:

(1) A detailed estimate showing the expense of conducting each department and office of the Town for the ensuing fiscal year.

~~(2) The value of supplies and materials on hand, together with the nature and kind of machinery or other implements and the condition thereof.~~

~~(3)~~ (2) The amount of the debt of the Town, together with a schedule of maturities of bond issues.

~~(4)~~ (3) An itemized statement of all other estimated expense to be incurred in the affairs of the Town.

~~(5)~~ (4) A statement of the amount required for interest on the bonded debt, the amount necessary to pay any Bond maturing during the year and the amount required for the "Sinking Fund" or "Sinking Funds"

~~(6)~~ (5) An estimate of the amount of money to be received from taxes, assessment, and all other anticipated ~~incomeof~~ income of the Town from any source or sources whatsoever.

(D) The Town Council shall, so far as possible, adhere to the Budget so adopted in the making of appropriations.

Removal ~~Of~~ of Obstructions, Nuisances, ~~And~~ and Unsanitary Conditions

Section 23.

(A) ~~in~~ In addition to the power to impose fines and penalties for the maintenance of obstructions, nuisances, and unsanitary conditions, as those terms may be defined by the ~~Councilmen~~ Councilmembers, if the ~~Councilmen~~ Councilmembers either upon their own inspection or upon information obtained from the ~~Town Clerk~~ President or Police Force, shall deem that such obstruction, nuisances, or unsanitary condition ought to be removed or abated as the case may be, the ~~Councilmen~~ Councilmembers shall enact an ordinance or adopt a resolution, or both, to that effect and thereupon shall direct the ~~Town Clerk~~ President to forward, to the person or persons continuing or causing such obstruction, nuisances, or unsanitary condition, or to the person or persons who are responsible for its existence or continuance, by the mails of the United States, in a sealed wrapper addressed to his/her or their last and best known post office address, a notice to remove or abate the same as soon as may be possible. If such person or persons refuse or neglect, for the space of five (5) days after such notice is mailed, to remove or abate the same, the ~~Councilmen~~ Councilmembers may have a warrant issued in the name of the Town Council of the Town of Ellendale. The warrant shall command him/her forthwith to remove or abate such obstruction, nuisance or unsanitary condition. The ~~Town Clerk~~ President shall forthwith proceed to remove or abate the same and, to that end, he shall have full power and authority to enter into and upon any lands and premises in the

Town. He/she shall likewise have the authority to take with him such assistants, implements, vehicles or other things as may be necessary and proper to do and perform all matters and things in connection with the removal or abatement of such obstruction. nuisance, or unsanitary condition.

(B) At the regular monthly meeting of the Town Council next succeeding the delivery of the warrant to him/her, the ~~Town Clerk~~ President shall make a return to the ~~Councilmen~~ Councilmembers of his proceedings upon he warrant and shall specify the costs and expenses of all necessary work, labor, and proceedings incurred by him in the abatement or the removal of the same.

(C) At such meeting, the ~~Councilmen~~ Councilmembers shall determine, from the return of the Town Clerk, the costs and expenses of all necessary work, labor, and proceeding in reference to the abatement or removal of such obstruction, nuisance, or unsanitary condition. The ~~Councilmen~~ Councilmembers shall issue or have issued a warrant, containing an itemized account of that information, together with the name and last and best known address of the person from whom the ~~Councilmen~~ Councilmembers shall determine the amount to be due and shall deliver such warrant to the Town Clerk. The warrant shall command him/her forthwith to collect the amount stated to be due thereon from the person or persons designated therein. The Town Clerk shall forward to such person or persons, in a sealed wrapper, a true and correct copy of the warrant by depositing the same in the United States mails and addressed to such person's or persons' last and best known post office address. If such person or persons shall refuse or neglect to pay the same to the Town Clerk for the use of the Town within thirty (30) days from the date of the mailing of such true and exact copy of the warrant, the Town Clerk shall then be authorized and required to collect the same in any of the manners hereinbefore provided in Section 17 hereof.

Streets

Section 24.

The Town Council shall have power and authority to locate, lay out, and open new streets and to widen or abandon streets or parts thereof, whenever they shall deem it for the best interest of the said Town. The procedure in every case as aforesaid, shall be as follows: The Council shall, by a majority vote, adopt a resolution favorable to the opening of the new street, or to the widening or altering of a street, or to the vacating or abandoning of a street, or any part thereof, as the case may be, and giving a general description of the street to be opened or widened, or altered, or of the street or part thereof to be vacated or abandoned, as the ease may be. The said resolution shall also state the day, hour and place when the said Council will sit to hear objections and to award just and reasonable compensation to anyone who will be deprived of property. A copy of such resolution shall be posted in five (5) or more public places in the said Town at least five (5) days before the day fixed for the hearing aforesaid. At the time and place fixed in the said resolution said Council shall hear such

residents of the Town or owners of the property affected as shall attend, and it shall at said meeting or at a subsequent day, as it shall deem proper, adopt a resolution by a majority vote, to proceed with, or to abandon as it shall deem for the best interest of the said Town, the opening of the street or streets, or the widening, altering, vacating or abandoning of the existing street or streets, or part thereof, as the case may be, as contemplated in its prior resolution. And in case the determination of the said Council shall be to proceed with the plan contemplated by the resolution first aforesaid, Council shall award just and reasonable compensation to anyone who will be deprived of property in consequence thereof. Such compensation, if any be awarded, shall be paid by the Treasurer of the Town, on a warrant drawn on him/her by authority of the Council aforesaid upon delivery of a Deed in fee simple in favor of the Town of Ellendale, and clear of all liens and encumbrances. If anyone who will be deprived of property as aforesaid be dissatisfied with the compensation awarded by the Council aforesaid, he/she may, within five (5) days after the award of the Council as aforesaid, appeal from such award by serving written notice to that effect on the Secretary or President of Council. In order to prosecute said appeal such appellant shall within five (5) days after the expiration of the five (5) days allowed for the appeal as aforesaid, apply to the Judge of the Superior Court for the State of Delaware, resident in Sussex County, or in his/her absence at the time, to the Chief Justice of the said Court, for the appointment of freeholders to hear and determine the matter of compensation to such appellant for any of which will be deprived as aforesaid, and thereupon the said Judge or Chief Justice, as the case may be, shall issue a commission under his/her hand directed to five impartial ~~freeholders~~ residents of Sussex County, commanding them to determine and fix the damages which the said appellant will sustain by reason of being deprived of any property as aforesaid, taking into consideration the benefit or advantages that will enure to the said appellant from said new street or otherwise, and to make return of their funds to the said Judge or Chief Justice, as the case may be, at a time appointed in said commission. The said freeholders shall give notice of the day, hour and place when they will meet to view the premises and to assess the damages, if any, as aforesaid. Such notice shall be served upon the appellant personally, or by posting a copy on the premises affected at least five (5) days before the day they are to view the premises as aforesaid and a copy of such notice shall also be served on the Secretary or the President of Council at least five (5) days before the day of such meeting. The ~~freeholders~~ residents named in such commission being first sworn or affirmed on the day and at the hour and place stated in the notice aforesaid, shall view the premises and hear the appellant and his/her witnesses and the Council and its witnesses, and shall without delay, determine and fix the damages, if any, which the said appellant will sustain by reason of being deprived of any property as aforesaid. Thereupon and without delay the said ~~freeholders~~ residents shall make return in writing of their proceedings in the premises to the said Judge or Chief Justice, as the case may be, who shall cause the said return to be delivered to the said Secretary or President of Council and such return shall be final and conclusive. The said Judge or Chief Justice shall have power to fill any vacancy among the ~~freeholders~~ residents.

The amount of damages being ascertained as aforesaid, the said Council may pay or tender the same to the person or persons entitled thereto, or may deposit the same to his credit in any Bank in the Town of Ellendale to the credit of the person or persons entitled thereto within the said period of one (1) month, and thereupon the said Council may carry into effect the plan contemplated in their resolutions aforesaid. In the ascertainment and assessment of damages by the freeholders appointed by the Judge or Chief Justice aforesaid, if the damages shall be increased or if the Council shall decide not to take said land, the costs of the appeal shall be paid by the Treasurer of the said Town out of any money in his/her hands belonging to the Town, but if said damages shall not be increased, the costs of the appeal shall be paid by the party appealing. The fees of the ~~freeholders~~ residents shall be five dollars per day to each, which shall be taxes as part of the costs. After the damages shall be fixed and ascertained by the ~~freeholders~~ residents as aforesaid, Council shall have the option of paying the damages assessed within the term aforesaid and proceed with the improvements, or upon the payment of the costs only, may abandon the proposed improvement.

Whenever the land comprehended or included in any street, or part thereof, is vacated or abandoned under this Section if owned by the said Town, the Council may, in its discretion, sell such land at public sale and for such consideration as the Council shall deem proper, and shall have the right and power to convey to the purchaser or purchasers thereof a good and sufficient title thereto for whatever estate the said Town may have therein.

The word "street" shall be deemed and held to comprehend and include sidewalks, lanes, and alleys for all the purposes of this Section.

Paving, Guttering, Curbing

Section 25.

The Council shall have the power to cause to be paved or repaved the sidewalks of the said Town, or any part or portion thereof, and shall have power to have existing curbs or gutters, or both, repaired or relaid, or new curbs or gutters, constructed, or any part of or portion thereof, in said Town, with such material or materials and of such width or size, and subject to such specifications as it shall determine. Before the exercise of said power in any particular instance, the Council shall adopt an ordinance or resolution stating in effect that on a named day and at a named hour and place the Council will meet to consider the question of paving or repaving the sidewalks with a specified material or materials, or repairing existing curbs or gutters, or both, or altering existing curbs or gutters, or both, with any specified material or materials and according to the stated specifications on a named street in front of the property of named owners, and of assessment of the costs thereof against such owners. The said ordinance or resolution shall be published at least one week prior to the meeting aforesaid in at least one issue of a newspaper published in the said Town, or in a newspaper published elsewhere in Sussex County, if there be none in said Town published. The Council shall hold a meeting in said Town in accordance with said

ordinance or resolution and thereat shall hear the aforesaid owners of property and other residents of the Town appearing on the question referred to in the said ordinance or resolution.

After such hearing, the Council, either at said meeting or at a subsequent meeting, shall decide whether or not to proceed with the improvements referred to in said ordinance or resolution, and if it shall decide to proceed it shall determine whether the whole or some specified proportion of the costs of the improvements aforesaid in front of the real property of the owner or owners named in the aforesaid ordinance or resolution shall be borne by said owners. If said determination shall be that the whole or specified proportion of said costs shall be borne by said owners, then in such case the said owners shall be compelled to pay the whole or specified proportion of the cost aforesaid,, as the case may be, the amount to be paid by the owner of each parcel of property affected to be determined by the lineal frontage of the parcel on the sidewalk to be paved or repaved, or in the gutter to be repaired or laid, or on the curb, to be repaired or constructed, or any or all of said improvements, as the case may be. When the said paving or repaving, curbing or recurbing, guttering or reguttering, or any or all of them, have been done and the costs thereof ascertained, the Council shall ascertain the amount that the owner of each parcels of property aforesaid shall pay as hereinbefore stated, and shall give written notice thereof to such owner, or one of the co-owners, by mailing the same to his/her last known address. If any such owner shall fail to pay the specified amount within thirty (30) days after the mailing of such notice, the same may be collected in any of the manners hereinbefore provided in Section 17 hereof.

Contracts

Section 26.

(A) All contracts for the purchase of materials or for the furnishing of services authorized or permitted by this Charter shall be awarded to the bidder submitting the lowest and best bid, provided, however, that competitive bidding shall not be required in any of the following circumstances:

1. The aggregate amount involved is not more than ~~Five~~ Ten Thousand dollars ~~($5,000)~~ ($10,000) or is below the minimum threshold established by the State of Delaware Office of Management and Budget for Material and Non-Professional Services, Public Works, and/or Professional Services;

2. The purchase or contract is for personal or professional services;

3. The purchase or contract is for any service rendered by a university, college or other educational institution;

4. The purchase or contract is for any service to be rendered by the State of Delaware or any political subdivision thereof;

5. The purchase or contract is for property or services for which it is impracticable to obtain competition;

6. The public exigency as determined by the Town ~~Councilmen~~ Councilmembers will not permit the delay incident to advertising;

7. The material to be purchased are to be used to complete a project under the supervision of the ~~Town Clerk~~ President or delegate;

8. The purchase or contract is for property or services for which the ~~Councilmen~~ Councilmembers determine the prices received after competitive bidding are unreasonable as to all or part of the requirement or were not independently reached in open competition;

9. A public emergency as determined by the ~~Councilmen~~ Councilmembers exists;

10. The purchase or contract is made by, with, or through an agency of the State of Delaware. 71 Del. Laws, c. 388

(B) Notwithstanding the foregoing provisions of this Section 26 and without complying with the competitive bidding procedures described in this Section 26, the Town Council may enter into any contract necessary or desired in connection with a special development district or tax increment financing district created or designated by the Town Council pursuant to Section 18(A)(42) of this Charter, except a contract in which the Town Council is directly contracting for the procurement of the labor or material for public improvements for the benefit of such district, provided that the foregoing exception shall not apply to development, funding or similar type contracts between the Town Council and an owner of real property in such district when the contract is generally for the transfer by the owner to the Town of Ellendale of the work performed and the cost of labor or material provided by such owner for the benefit of such district.

Water System

Section 27.

The Town Council is hereby vested with full power and authority, after approval of a majority of votes cast at a referendum therefor pursuant to the procedure set forth in Section 31, subsection K through P, to provide for the Town of Ellendale an ample supply of pure water and to purchase, lease, erect, construct, maintain, operate and control wells, reservoirs, pumping machines and stations, water mains, fire hydrants and all other instruments for the collection, storage, conveyance and distribution of water on, over under or through the lands of any person. The Council shall have power to enact ordinances, rules and regulations, in regard to the use for public or private purposes of water furnished by the Town, and the amounts to be paid by the user thereof, and to fix fines, or penalties, or both for any willful or negligent injury or damage to, or interference with the water system of the Town. The Council may, at its option, furnish water from the Town system to places and properties outside the Town limits upon such special terms, charges and conditions as it shall deem wise.

The Council may, by condemnation proceedings, take private land, or the right to use private lands, under, over or on the surface thereof, for the proper operation or extension of the water system. The proceedings by condemnation under this Section shall be the same as prescribed in Section 24 of this Act for the opening and laying out of new streets, and the resolutions referred to in said Section 24 shall be changed and modified to cover the cases contemplated by this present Section.

Sewer System

Section 28.

The Town Council is hereby vested with full power and authority, after approval of a majority of votes cast at a referendum therefor pursuant to the procedure set forth in Section 31, subsection K through P, to provide, construct, extend, maintain, manage and control a sewer system for the health, sanitation and convenience of the inhabitants of the said Town, on, over, under or through the lands of any person. The Council shall have power to enact ordinances, rules and regulations regarding the sewers and the sewer system of the Town and the use thereof, and the amounts to be paid by the users thereof, and to fix fines or penalties, or both, for any willful or negligent injury or damage to or interference with the said sewers or sewer system of the Town. The Council may at its option furnish sewer facilities to places and properties outside of the Town limits upon such special terms, charges and conditions as it shall deem wise. The Council may require any property in the Town, for which there is any available sewer, to be connected with the sewer system and may compel the owner of such property to pay the cost of such connection and the tapping fee therefor, as provided in Section 23 of this Act. The Council may, by condemnation proceedings, take private land, or the right to use private land, under, over or on the surface thereof, for the proper operation or extension of the sewers and sewer system of the Town. The proceedings by condemnation under this Section shall be the same as prescribed by Section 24 of this Act, for the opening and laying out of new streets, and the resolutions referred to in said Section 24 shall be changed and modified to cover the cases contemplated by this present Section.

Electric, Current, Power Plant, Franchises

Section 29.

The Town Council of the Town of Ellendale shall have full power and authority, after approval of a majority of votes cast at a referendum therefor pursuant to the procedure set forth in Section 31, subsection K through P, to erect, construct, equip, maintain and operate a plant or plants for the generating and manufacturing of electric current for the use of the inhabitants of said Town and for lighting of streets, squares, lanes, alleys and public places and buildings of said Town and shall have full power and authority to construct, erect, maintain, improve, extend, equip and operate such transmission and distributing lines for said current as may be necessary to properly light said Town and to furnish proper

connections for electric current to the properties of the inhabitants thereof who may desire the same. The Council shall have power to make contracts for the purchase of heat, light, sewer, water and electric current with any responsible persons, firms, or corporations and to distribute the same to users within or without the said Town with the same full powers as if such heat, light, power, water or electric current had been generated or manufactured by the said Town as herein expressly provided for by this Act. Council shall grant to all persons whosoever in said Town the privilege of using the electric current conveyed and distributed by said Town in such manner and on such terms and conditions and at such rates and for such amounts as to the Council may seem just and proper and shall enact such ordinances relating to electric current, its generation and distribution in said Town and the regulation of the connections thereof with the properties of individuals in said Town and its general management and control as to said Council shall from time to time seem most expedient. The council may at its option transmit electric current from said Town to places and properties outside of the Town limits upon such terms, charges and conditions as it shall deem wise.

The Town Council shall also have full power and authority at any regular or special meeting, by a majority vote, to enact ordinances or adopt resolutions granting franchises to any responsible person, firm, association or corporation, and for such terms of years as shall seem wise to said Council to use the present and future streets, squares, alleys, and lanes of the said Town for purposes of furnishing light, heat, power, gas, television services, or water, or any or all of them to said Town and to the persons, firms, or corporations residing therein and for the purpose of transmitting light, heat, power, gas, television services, and water, or any or all of them through, over, across or under said streets, squares, alleys and lanes to points outside of the limits of said Town, any such franchise or franchises to contain such restrictions, conditions and stipulations as shall to said Council seem wise, and said Council, by a majority vote, at any regular or special meeting, shall also have full power and authority to enter into contracts with any responsible persons, firms, associations or corporations for the furnishing of electric current, either at wholesale or retail to said Town, and to persons, firms and corporations residing therein. or adjacent thereto.

The ~~Councilmen~~ Councilmembers may, by condemnation proceedings, take private land and property, or the right to use private land and property, under, over, or on the surface thereof, for the proper operation, manufacture or extension or distribution of gas or electric current as above provided. The proceedings by condemnation under this Act shall be the same as prescribed by Section 24 and shall be changed and modified to cover those cases contemplated by this particular Section of the Charter.

Drainage

Section 30.

The Town Council of said Town shall have the full jurisdiction and control within the limits of said Town of the drainage thereof, and the right to alter and change the course and direction of any of the natural water courses, runs or rivulets within the limits of the Town, and may pass ordinances for the opening of gutters, drains and sewers within said Town limits and the regulating and maintaining, cleaning and keeping the same and the natural water courses, runs and rivulets within the said Town limits open, clean and unobstructed, and for that purpose may authorize the entry upon private lands and take, condemn and occupy the same in the same manner and by the same condemnation proceedings as hereinbefore provided in case of the water and sewer systems of the said Town and as prescribed by Section 24 of this Act for the opening and laying out of new streets, and the resolutions referred to in said Section 24 shall be changed and modified to cover the cases contemplated by this present Section. The Town Council may by an ordinance or by a resolution levy a tax upon all or a portion of the citizens for drainage, as set forth under Section 15 thereof.

Procedure For Referendum

Section 31.

(A) Qualified voters of the Town of Ellendale shall have the power to require reconsideration by the Town Council of any adopted Ordinance and to approve or reject it at an election as provided herein; provided, however, that such power of referendum shall not extend to the budget or capital program or any emergency ordinance or any ordinance relating to the appropriation of money or any ordinance relating to the levy of taxes.

(B) A Referendum Petition, signed by qualified voters of the Town of Ellendale entitled to register and vote in the Annual Municipal Election if such Annual Municipal Election were held on the day that the Referendum Petition was signed by such qualified voter, whether or not such voter is a registered voter, containing signatures equal in number to at least forty percent (40%) of the total number of voters who voted in the Annual Municipal Election next preceding the execution of the Referendum Petition with the local address of the person so signing, or forty-five (45) residents and property owners, qualified as aforesaid, which ever is greater, shall be presented to the Town Council at the next regular meeting of the Town Council following adoption of the ordinance sought to be reconsidered. Each copy of such petition shall contain and have attached thereto throughout its circulation the full text of the ordinance sought to be reconsidered.

(C) Each copy of the petition shall have attached to it, when filed, an affidavit executed by the signer thereof stating that he/she personally circulated the petition, the number of signatures thereon, that all signatures were affixed in his/her presence, that he/she believes them to be the genuine signatures of the persons whose names they purport to be, that each such person who signed it is qualified to sign the petition and that each signer had an opportunity before signing, to read the full text of the ordinance sought to be reconsidered.

(D) A Petition for Referendum shall be filed at the next regular meeting of the Town Council following adoption by the Town Council of the ordinance sought to be reconsidered or it shall not be the subject of a referendum. If there are less than twenty-eight (28) days from the date of the adoption of the Ordinance sought to be reconsidered until the next regular meeting of the Town Council of the Town of Ellendale, the Petition for Referendum shall be presented at the first regular meeting following the expiration of the said twenty-eight (28) day period or the Ordinance sought to be reconsidered shall not be the subject of a referendum.

(E) Within twenty (20) days after the petition is filed with the Town Council at a regular meeting the Secretary shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, and shall promptly send a copy of the certificate to the circulator of such petition by certified mail with return receipt requested. A petition certified insufficient for lack of the required number of valid signatures may be amended one (1) time if the circulator files a Notice of Intention to Amend with the Secretary within two (2) days after receiving a copy of his/her certificate and files a Supplementary Petition upon additional papers within five (5) days after receiving the copy of such certificate. Such Supplementary Petition shall comply with the requirements of this Section concerning form, content, and the affidavit of the circulator. Within five (5) days after it is file, the Secretary shall complete a certificate as to the sufficiency of the petition, as amended, and shall promptly send a copy of such certificate to the circulator by certified mail with return receipt requested, as in the case of the original petition. If the petition, or amended petition, is certified sufficient, or if the petition or amended petition is certified insufficient, and the circulator does not elect to amend or request a review of the sufficiency of the certificate by the Town Council of the Town of Ellendale within the time required, the Secretary shall promptly present his/her certificate to the Town Council at the next regular meeting and the certificate shall then be a form of determination as to the sufficiency of the petition

(F) If a petition has been certified to be insufficient and the circulator has not filed Notice of Intention to amend, or if an amended petition has been certified insufficient, the circulator may, within two (2) days after receiving the copy of such certificate file a request that it be reviewed by the Town Council. The Town Council shall review the certificate at the next regular meeting following the filing of such request, and approve or disapprove it, and the determination of the Town Council shall be a final determination as to the sufficiency of the petition.

(G) Any person or persons, jointly or severally, aggrieved by the decision of the Town Council may present to the Superior Court of the State of Delaware, a petition duly verified setting forth that such decision is invalid, in whole or in part, specifying the grounds of such invalidity. Such petition shall be presented to the Court within thirty (30) days following the determination by the Town Council as to the insufficiency of such petition. Upon presentation of the petition, the Court may allow a Writ of Certiorari direct to the Town Council of the Town of Ellendale to review such decision of the

Town Council and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner or his/her attorney, which shall not be less than ten (10) days and may be extended by the Court. The allowance of the Writ shall stay proceedings upon the decision or determination appealed from The Court may reverse or affirm, wholly or partly, or may modify the determination brought up for review.

(H) Upon the filing of the Petition for a Referendum with the Secretary, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate upon the happening of any of the following events.

(1) There is a final determination of insufficiency of the Petition; or

(2) The Petition is withdrawn by the circulators thereof or sufficient copies thereof arewithdrawn so that there are insufficient numbers of signatures as required by this Section; or

(3) The ~~Councilmen~~ Councilmembers repeal the ordinance; or

(4) Thirty (30) days have elapsed after a vote by the voters on the ordinance: or

(5) There is a final determination by the Superior Court.

(I) The Town Council shall reconsider the referred ordinance at the first regular meeting after the Petition for a Referendum has been finally determined to be sufficient. If the Town Council fails to repeal the referred ordinance, the referred ordinance shall be submitted to the voters of the Town of Ellendale at an election.

(J) The vote of the residents and property owners of the Town of Ellendale on a referred ordinance shall be held not less than thirty (30) days and no later than ninety (90) days from the date that the petition is determined to be sufficient. If the annual Municipal Election is to be held within the period prescribed in this Section, such referendum shall be considered as part of that election. If the Annual Municipal Election is not to be held within the period prescribed in this section, the Town Council of the Town of Ellendale shall provide for a special election. If the Town Council fails to hold a referendum within the time specified in this section, the ordinance for which the petition was filed shall be deemed to be repealed at the expiration of ninety (90) days from the date that the petition was considered to be sufficient, and shall not be passed in the same form for a period of six (6) months from the effective date of repeal.

(K) At the said special Election, every person, male or female, who shall have attained the age of eighteen (18) years, and who shall be a ~~freeholder~~ resident or leaseholder in the Town of Ellendale for a period of six (6) months immediately preceding the date of such Special Election, and who shall be a resident of the State of Delaware and of the Town of Ellendale shall have one (1) vote provided such person is registered on the corporate "Books of Registered Voters" of the Town of Ellendale as prescribed in this Charter. Any person who shall register on the "Books of Registered Voters" shall be entitled to vote in the Special Election provided by this Section.

A person may register at the Office of the Town Clerk during the regular office hours on any day in order to vote in the Special election until the close of business on the second Friday prior to the date of said Special Election. Any person registered to vote in the Annual Municipal Election shall not be required to register in order to vote in the Special Election to be held pursuant to this Section. The "Books of Registered Voters" shall be conclusive evidence of the right of any person to vote at the Special Election.

(L) The notice of the time and place of holding the said Special Election shall be printed in at least two (2) issues of a newspaper having a general circulation in the Town of Ellendale within thirty (30) days immediately preceding the date of the Special Election.

(M) The President of the Town Council shall appoint three (3) persons to act as a Board of Special Election, if a Special Election is required. The polling place shall be open from eleven O'clock (11:00) in the morning, prevailing time, until seven o'clock (7:00) in the evening, prevailing time, on the date set for the Special Election. Persons in the polling place at seven O'clock (7:00) in the evening, shall be entitled to vote even though such votes may be cast after seven o'clock (7:00) in the evening.

(N) Immediately after the closing of the polling place or places, the Board of Special Election the Board of Election if the referendum is held on the day of the Annual Municipal Election, as the case may be, shall count the ballots for and against the proposition as presented, and shall announce the results thereof. The Board of Special Election or the Board of Election, as the case may be, shall make a certificate under their hands of the number of votes cast for and against the proposed ordinance and the number of void votes, and shall deliver the same to the Town Council. The said certificate shall be filed with the papers of the Town Council of the Town of Ellendale.

(0) The form of the ballot of the said Election, whether the same be considered at the Annual Municipal Election or at a Special Election shall be as follows:

For the Referred Ordinance_____

Against the Referred Ordinance_____

(Check your Preference)

Paper ballots may be used in any Special Election on a referral of an ordinance. The Town

Council shall cause to be prepared and printed a sufficient number of ballots not less than five

(5) days prior to the date of the Special Election. Voting machines shall be used if the

referendum is held on the day of the Annual Municipal Election.

(P) If the majority of the residents and property owners voting on a referred ordinance vote against such ordinance, it shall be considered repealed upon the certification of the result of the election by the Board of Special Election in the case

of a Special Election or upon the certification by the Board of Election in the case of such referendum being held on the day of the Annual Municipal Election. No ordinance which has been repealed as a result of a referendum shall be passed again in the same form by the Town Council of the Town of Ellendale for a period of six (6) months from the date of the referendum.

Compendium

Section 32.

The Council is hereby vested with the authority to enact ordinances or resolutions relating to any subject within the power and functions of the Town, or relating to the government of the Town, its peace and order, its sanitation, beauty, the health, safety, convenience and comfort of its population, and the protection and preservation of property, and to fix, impose and enforce the payment of fines and penalties for the violation of such ordinances or resolutions; and no provision of this Charter as to ordinances on any particular subject shall be held to be restrictive of the power to enact ordinances or resolutions on any subject not specifically enumerated.

It shall be the duty of the ~~Councilmen~~ Councilmembers, at reasonable times, to compile the ordinances, codes, orders, and rules of the Council of the Town of Ellendale. It shall have a reasonable number of copies printed for the use of the officials of the Town and for public information. From time to time, upon the enactment of new ordinances, codes, rules and regulations, or upon the enactment of amendments to the same, the Council shall enroll the same in the Minutes of the Council and shall keep copies of the same in a book to be provided for that purpose so that the same may be readily examined. It shall furnish to the President of the Town Council of the Town of Ellendale copies thereof as they are enacted, and therefrom may cause supplements to be compiled and printed to any compendium thereof heretofore printed as above-provided. By virtue hereof, all ordinances heretofore adopted by a majority vote of the Town Council of the Town of Ellendale, as the same was composed at the time of the enactment of these provisions into law, shall be given the full force and effect of law, notwithstanding any previous Charter provisions superceded hereby to the contrary.

Health

Section 33.

(A) The power to adopt ordinances relating to the health of the population of the Town, or to prevent the introduction or spread of infections or contagious diseases or nuisances affecting the Town, shall extend to the area outside of the Town limits, and within one mile from said limits.

Fire

(B) The Council shall have the power to adopt all measures requisite or appropriate for protection against fire, and to appropriate money for the purpose of fire equipment, whether owned by the Town or by a Volunteer Fire Company.

Zoning

(C) For protection against fire, the Council may adopt ordinances to zone or district the Town and to make particular provisions for particular zones or districts with regard to buildings and building materials; to prohibit the use of building materials that may be deemed to create a fire hazard, and this power shall embrace new buildings or additions to or alterations of existing structures of every kind; to condemn buildings or structures, or portions thereof, that constitute a fire menace, and to require or cause the same to be torn down, removed, or so altered as to eliminate the menace of fire; to prescribe the height and thickness of walls of any building and the kind and grade of materials used in the construction thereof; to establish a building line for buildings to be erected, provided that such building line shall not be established more than ten feet back from front line of the lots.

The Council may adopt zoning ordinances limiting and specifying districts and regulating thereon buildings and structures according to their construction and according to the nature and extent of the business to be carried on therein.

The powers to be exercised under and by virtue of this provision shall be deemed to have been exercised under the police power and for the general welfare of the inhabitants.

The Council may create a Town Zoning Commission for the development, improvement and beautification of the Town, and may prescribe its powers and duties.

Building Inspection Permits

(D) The Council may provide for the issuance of building permits, and may forbid the construction of any new building, or the addition to, or alteration, or repair of any existing building unless a building permit has been obtained therefor.

Should any person, firm or corporation hereafter desire to erect any building or buildings within the corporate limits of said Town for the purpose of conducting therein the business of canning fruits, vegetables, meats, oysters, etc. or for the manufacture or manipulation of phosphate, fertilizer or manures of any kind, he/she or they before erecting any such building or buildings, or engaging in such business, shall make an application in writing for permission therefor to said Council. And should said Council determine that such building will not endanger the other property of the Town, and said business will not jeopardize the health of or be offensive to the citizens thereof, the Council shall have the authority to grant a permit to erect such buildings and conduct such business.

The Council shall have full power to fix and determine the placing and replacing of poles or other structures within the Town limits for the carrying of telegraph, telephone, power or other wires, and the attachments thereto, and to cause existing poles or structures to be removed whenever the same shall be deemed to be obstructions or detrimental to the beauty of the Town, or when such poles or structures are so placed as to inconvenience persons or render property less

desirable. This power shall extend as well to the location as to the relocation of such poles and structures, wires, and attachments, and may be exercised from time to time as occasion shall arise.

Licenses

Section 34.

The Council shall have the right to grant or refuse licenses for boxing exhibitions and other sports, to circuses, theatrical or minstrel companies, or like things, and exhibits or parades thereof, or the posting of bills for the advertisement thereof, to pool or billiard rooms and other places of amusement; to peddlers or canvassers, to any person having only a temporary place of business for selling or offering for sale goods, wares and merchandise; to Peddlers of meats, fish, oysters or vegetables and the location of wagons or stalls, provided that the Council shall not have the power to permit, by the license, interference with any place of business or with the convenience of public travel; to provide for the payment of taxes, fines, penalties, and forfeitures by performance of labor for the Town by those who may owe taxes, fines, penalties or forfeitures and to make proper regulations and rules therefor.

Trees

Section 35.

Trees being among the chief beauties of the Town, and their preservation requiring that they be treated with special care and intelligence, the Council is empowered to create a Tree Commission for the trees in the streets, and other public places of the Town, and to appropriate annually an amount of money adequate for their care and preservation. The Tree Commission may be given authority to take necessary or appropriate action to prevent injuries to trees from electric wires or from any other source or cause whatsoever, and to combat the pests and diseases to which they are subject, and when necessary to employ experts provided that they do no exceed the appropriation regulations made by the Council.

Penalties

Section 36.

The Council shall have the power to enact ordinances, rules and regulations and to fix the penalties for violations, thereof relating to the use of streets, highways, lanes, and alleys, the parking of vehicles thereon, with the power to prohibit parking on streets, or portions thereof, entirely or within certain hours, or for certain lengths of time. 71 Del. Laws, c. 388

LIMITATION OF ACTIONS

Section 38.

No action, suit or proceeding shall be brought or maintained against the Town of Ellendale for damages either compensatory or punitive, on account of any physical injury or injuries, death or injury to property by reason of the negligence of the Town ~~Councilmen~~ Councilmembers of the Town of Ellendale, or any of its departments, officers, agents,

or employees thereof, unless the person by or on behalf of whom such claim or demand is asserted within one (1) year from the happening of such injury or the suffering of such damage, shall notify the ~~Councilmen~~ Councilmembers of the Town of Ellendale in writing of the time, place, cause, character and extent of the injuries sustained so enrolled or damages suffered. Any suit brought against the ~~Councilmen~~ Councilmembers of the Town of Ellendale shall be against them only in their capacity as representatives of the Town Government and not as individuals.

Investigations

Section 39.

The Town ~~Councilmen~~ Councilmembers of the Town of Ellendale shall have the power to inquire into and investigate the conduct of any office, officer or employee of the Town and to make investigations of all municipal affairs, and, for any such purpose or purposes, shall have the power to subpoena witnesses, administer oaths and compel the production of books, papers or other evidence.

Annexation

Section 40.

Annexation of Territory. Subject to state laws of general application to municipalities pertaining to annexation of territory, the ~~town~~ Town shall have power to annex any additional contiguous territory adjoining the corporate limits of the ~~town~~ Town as hereinbefore set forth or as hereafter extended pursuant to the procedure set forth in this section, and to apply to all such additional territory all laws, ordinances, resolutions, and policies in force in the ~~town~~ Town so far as they may be locally applicable. For purposes of this section, "contiguous" means that a part of the boundary of the territory sought to be annexed is coterminous with a part of the boundary of the municipal corporation.

40.1 Initiation of annexation proceedings.

40.1.1 By petition of the property owners. Any property owner(s) holding record fee simple to real property in territory contiguous to the then-existing corporate limits of the ~~town~~ Town may petition the Town Council to annex that certain territory in which they own property. Such petition shall be in writing, duly executed and acknowledged by each petitioner, shall describe with reasonable certainty the territory proposed for annexation, indicate the property owned by each petitioner therein, state the reasons for the requested annexation, and identify the proposed zoning district classification(s) for such territory (which proposed zoning classifications shall be consistent with the ~~town's~~ Town's comprehensive plan). The Town Council may, within 90 days following the filing of such petition in the ~~town~~ Town office, vote to accept such petition and proceed as hereinafter provided, or to reject such petition. Any petition not so accepted within said 90 days shall be null and void.

40.1.2 Resolution of the Town Council. The Town Council may, at any time, adopt a resolution proposing the annexation of any territory(s) contiguous to the ~~town~~ Town. Such resolution shall describe, with reasonable certainty, the territory(s) proposed to be annexed, state the reasons for the proposed annexation, and identify the proposed zoning district classification(s) for such territory(s) (which proposed zoning classifications shall be consistent with the ~~town's~~ Town's comprehensive plan). Upon adoption of such resolution, the Town Council shall proceed as hereafter provided.

40.1.3 For purposes of this section 40, "territory contiguous to the then-existing corporate limits of the ~~town~~ Town" shall include both real property which, although itself not contiguous to the ~~town's~~ Town's then-existing corporate limits, is contiguous to other real property which is contiguous to the ~~town's~~ Town's existing corporate limits and is proposed to be included in the annexation, as well as real property which would be contiguous under section 40.9.

40.2 Preliminary Annexation Procedures. Whether annexation is proposed by petition of the property owners or by resolution of the Town Council, the following preliminary procedures shall be complied with:

40.2.1 First Resolution. The Town Council shall adopt a resolution notifying the property owners and the residents of both the ~~town~~ Town and the territory proposed to be annexed, that the ~~town~~ Town proposes to annex certain territory which adjoins its then corporate limits ("First Resolution"). The resolution shall contain a description of the territory proposed to be annexed, shall identify the zoning district classification(s) proposed for such territory if annexed (which proposed zoning classifications shall be consistent with the ~~town's~~ Town's comprehensive plan), shall indicate whether any annexation agreement is being considered in connection therewith, and shall fix a time and place for a public hearing on the subject of the proposed annexation and zoning. Such resolution may also provide that if the annexation is finally approved, the ~~town~~ Town shall not be obligated to extend any municipal facilities or improvements unless and until the Town Council, in the sole exercise of its reasonable discretion, determines that it is appropriate for the ~~town~~ Town to do so or the owner or developer of any property so annexed (or any portion thereof) binds itself, with reasonable surety acceptable to the ~~town~~ Town, to pay in full all costs and expenses to extend or construct such municipal facilities and improvements to serve such lands (in strict accordance with all governing federal, state, and ~~town~~ Town regulations and standards), subject to an appropriate "recapture agreement" (acceptable to the ~~town~~ Town) pursuant to which the owner(s) or developer(s) of other lands benefited by the extensions or improvements paid for by the initial owner/developer under the recapture agreement would pay to the town their equitably-determined proportionate share of such costs and expenses (as a condition precedent to obtaining such extensions and/or improvements) which amounts the ~~town~~ Town would, upon receipt, rebate to the owner or developer which had originally paid for those extensions and/or improvements.

40.2.2 Referral to Planning Commission. The Town Council shall forward a copy of the aforesaid resolution, along with any proposed annexation agreement(s) in connection therewith, to the Planning Commission for its advisory

review and comment. The Planning Commission's recommendations and comments shall be submitted to the Town Council at or before the public hearing held pursuant to section 40.2.4, provided that if such recommendations or comments are not received from the Planning Commission at or prior to such public hearing, the Town Council may proceed without the benefit thereof.

40.2.3 Compliance with State Statutes of General Application. To the extent required thereby, the Town Council shall comply with the applicable provisions of 29 Del.C. Chapters 92 and 93, and 22 Del.C. Section 101 (as those provisions may from time to time hereafter be amended, or in accordance with any future corresponding provisions of law).

40.2.4 Public Hearing. The Town Council shall provide notice of the public hearing at least 30 days prior to the date of such hearing. Notice thereof shall be given as follows:

(1) Form of Notice. All notices required by this section shall set forth the following

information:

(A) subject of the hearing (to consider annexation petition)

(B) date, time, and place of the hearing

(C) description of the subject property(s), to include approximate size, street address, owners of record, location in relation to nearest road(s), tax map parcel number, and deed reference

(D) description of any applicable annexation agreement

(E) the right to submit written comments prior to the conclusion of the public hearing

(2) Notice by Mail. A copy of such written notice shall be mailed to:

(A) the record owner(s) of the subject parcel(s); written notice to one co-owner shall suffice as notice to all

(B) the record owner(s) of all abutting parcels; written notice to one co-owner shall suffice as notice to all

(C) the Delaware Office of State Planning Coordination

(D) the Sussex County Council

(E) the Delaware Department of Public Safety and Homeland Security

(F) the Ellendale Volunteer Fire Company

(G) the Milford School District

(H) the Delaware Department of Transportation

(3) Notice by Posting. A copy of such notice shall be posted:

(A) at the Ellendale Town Hall

(B) at not less than two other public places in the Town

(C) on each parcel of land which is the subject of the annexation petition

(4) Notice by Publication. A copy of such notice shall be published at least once in a newspaper of general circulation in the Town and its general environs.

(5) Controlling Date. Where all forms of notice are not provided on the same date, the date of the last form of notice shall be controlling as regards calculating the number of days notice provided.

(6) Conduct of Public Hearing. At the time, date, and place specified in the resolution proposing annexation (or at any revised date, time, or place if duly noticed as provided in section 40.2.4) the Town Council shall sit to hear comments and opinion from any concerned party (and to receive the recommendations and comments of the Planning Commission, if any) regarding the proposed annexation, any proposed annexation agreement(s) and the proposed zoning district classification(s). In addition to speaking at such hearing, or in lieu thereof, any interested party may submit written comments to the Town Council at any time prior to the conclusion of the hearing. Where such annexation was proposed by the Town Council under section 40.1.2, the owners of record of such lands may submit their written and notarized consent to such annexation prior to the conclusion of the public hearing. Such public hearing shall be for the purpose of obtaining public opinion and legislative fact finding, and the Town Council shall remain free to exercise complete legislative discretion in making its determination with regard to any proposed annexation.

40.3 Where annexation of ten (10) contiguous acres or less requested or consented to by record owners ~~Annexation of Five Contiguous Acres or Less Requested or Consented to by Record Owners~~. Where an annexation proposal involving ~~five~~ ten (10) contiguous acres or less is either initiated at the written petition of all of the owner(s) of record of such parcel(s), or consented to in a notarized writing signed by all the owners of record of such parcel(s) and submitted to the Town Council no later than the conclusion of the public hearing held pursuant to section 40.2.4, the Town Council may, at any duly noticed regular or special meeting held within six months of the public hearing, vote to accept or to reject such proposed annexation(s) and, if to accept, to proceed in accordance with section 40.5. 77 Del. Laws, c. 377, §10

40.4 Where proposed annexation exceeds ten (10) contiguous acres and/or not requested by or consented to by all owners of record ~~Proposed Annexation Exceeds Five Contiguous Acres and/or Not Requested By Or Consented To By All Owners Of Record~~ ("Second Resolution"). Where the lands proposed for annexation exceed ten (10) contiguous acres ~~five contiguous acres and/~~or where all of the owners of record to any parcel of land proposed for annexation have neither requested or consented to annexation by the close of the public hearing, the Town Council may, at any time within the six months following the public hearing, pass a resolution ordering a special election to allow the owners and residents of all lands proposed for annexation and of all lands within the existing municipal limits to approve or reject such annexation ("Second Resolution"). Such special election shall be held not less than 30 days, nor more than 60 days after the date of the

resolution ordering the special election. Such resolution shall identify the zoning district classification(s), consistent with the comprehensive plan, which shall be assigned to the territory(s) if annexed, and indicate if the annexation is subject to an annexation agreement. The passage of this resolution shall ipso facto be considered the determination of the Town Council to proceed with the proposed annexation, zoning district classification, and annexation agreement (if applicable) if the results of the election are in favor of the annexation. 77 Del. Laws, c. 377, §11

40.4.1 Notice of Special Election. The Town Council shall give notice of the special election not less than 15 days prior to the date of the election as follows:

(1) Form of Notice. All notices required by this section shall set forth the following information:

(A) subject of the special election (to approve annexation)

(B) date, time, and place that the polls will be open

(C) description of the subject property(s), to include approximate size, street address, owners of record, location in relation to nearest road(s), tax map parcel number, and deed reference

(D) the proposed zoning designation(s)

(E) qualifications of voters entitled to vote

(F) If such annexation is subject to an annexation or "re-capture" agreement, and if so, a brief description thereof, and that copies thereof are available for inspection at the Town Hall.

(2) Notice by Mail. A copy of such written notice shall be mailed to:

(A) the record owner(s) of the subject parcel(s)

(B) the residents of the subject parcel(s) as known to the Town

(3) Notice by Posting. A copy of such notice shall be posted:

(A) at the Ellendale Town Hall

(B) at not less than two other public places in the Town

(C) on each parcel of land which is the subject of the annexation election

(4) Notice by Publication. A copy of such notice shall be published at least once in a newspaper of general circulation in the Town and its general environs.

(5) Controlling Date. Where all forms of notice are not provided on the same date, the date of the last form of notice shall be controlling as regards calculating the number of days notice provided.

40.4.2 Those entitled to vote.

(1) Qualifications to Vote. At such special election, any person residing within the existing municipal limits who would be entitled to vote at the annual ~~town~~ Town election, and any person residing in the area proposed to be annexed who

would be entitled to vote at the annual ~~town~~ Town election if the area proposed to be annexed was already included in the ~~town~~ Town, shall be entitled to one vote. (For purposes of this section, as to those persons residing in the area proposed for annexation, "lawfully entitled to vote" shall not include "registered to vote" if registration is required for ~~town~~ Town elections). In addition, each legal entity or natural person holding record title in its own name to lands located within the existing municipal limits or in the territory proposed to be annexed, shall be entitled to one vote. All persons appearing to vote shall be required to provide satisfactory proof of identity and of their property ownership or residency.

(2) “One man, One Vote”. These provisions shall be construed so as to permit only "one-man, one vote." Where a voter is entitled to vote by virtue of both residence and ownership of property, that voter shall be entitled to only one vote; where a voter is entitled to vote by ownership of two or more properties, that voter shall be entitled to only one vote. Provided, however, that a voter qualifying to vote in the election conducted for the residents and property owners of the existing municipal limits and also in the election conducted for the residents and property owners of the lands proposed to be annexed shall be entitled to cast one vote in each election.

(3) Powers of Attorney. Any legal entity (other than a natural person) entitled to vote must cast its vote by a duly executed and acknowledged power of attorney. Any natural person may cast his/her vote by a duly executed and notarized power of attorney. Such power of attorney shall be surrendered to the board of special election. Such power of attorney so filed shall constitute conclusive evidence of the right of said person to vote in the special election on behalf of the legal entity or natural person granting the power.

40.4.3 Conduct of the special election. The Town Council shall conduct two simultaneous elections: one for the residents and property owners within the existing municipal limits, and one for the residents and property owners of the lands proposed for annexation. The Town Council may cause voting machines, electronic voting systems, or paper ballots to be used in the special election, as required by law, the form of ballot to be printed as follows:

_____ For the proposed annexation.

_____ Against the proposed annexation.

40.4.4 Board of Special Election. At the same meeting where the Town Council sets the date for the special election, the Town Council shall appoint three persons to act as a board of special election. One of the said persons so appointed shall be designated the presiding officer. The board of special elections shall oversee the conduct of the special election and shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all natural persons and other legal entities voting. Voting shall be conducted in a public place as designated by the resolution calling the special election. The polling place shall be open for such period of time as the Town Council determines to be reasonable and appropriate under the circumstances, not less than six hours, as set by the

Town Council, on the date set for the special election. All persons in the polling place at the time of the closing of the polls shall be permitted to vote, even though such votes are not cast until after the time for the closing of the polls. The Board shall provide for two separate ballot boxes or voting machines, one of which shall be for the qualified voters from within the existing municipal limits and one of which shall be for the qualified voters of the lands proposed for annexation. All ballots cast shall be deposited in the appropriate designated ballot box(es) or cast on the appropriate designated voting machine(s).

Immediately upon the closing of the polls, the Board shall separately count the ballots from each ballot box or voting machine in favor of annexation and the ballots against annexation and shall promptly and publicly announce the results thereof. The Board shall prepare a report of its activities and transmit such report (signed by all members of the Board), together with any records and documents (including all powers of attorney and ballots, whether accepted or rejected by the Board as invalid) to the Town Council within five days following the special election. Each member of the Board of Election shall be paid such reasonable sum as determined by the Town Council for their services in connection therewith. The Board of Special Election shall automatically be dissolved at the Town Council meeting where the report of the Board is accepted by the Town Council.

40.4.5 Expenses of Annexation Election. The Town shall pay all expenses necessary to conduct any special annexation election, including the cost of providing public notice, printing ballots, preparing ballot boxes, compensation of the members of the Special Board of Election, and any other documented and reasonable costs incurred by the Special Board of Election in connection with the holding of the special election. The Town may charge fees to the owners of properties seeking annexation to recover all of the Town's expenses related to conduct the special election for the annexation(s).

40.4.6 Results of special election.

(a) In order for the annexation to succeed, it shall be approved by a majority of the votes cast in both the election conducted for the voters within the existing municipal limits, and by a majority of the votes cast in the election conducted for the voters within the lands proposed for annexation.

(b) If the vote is favorable to the proposed annexation, the Town Council shall at its first meeting following the special election proceed in accordance with section 40.5 to adopt a resolution annexing the said territory and including it within the limits of the ~~town~~ Town ("final resolution"), as well as an ordinance designating the zoning district classification(s) of the territory(s) so annexed.

40.5 Adoption of Final Resolution; Notice to Agencies.

40.5.1 Final Resolution. Whether acting pursuant to section 40.3 (annexation requested or consented to) or 40.4 (majority of votes at annexation election cast in favor of annexation) the Town Council shall adopt a resolution annexing the said territory and including it within the limits of the ~~town~~ Town ("final resolution"). Contemporaneous therewith, the Town Council shall also adopt an ordinance designating the zoning district classification(s) of the territory(s) so annexed, which shall be consistent with the ~~town's~~ Town's comprehensive plan. If the initial resolution proposing annexation provided that the ~~town~~ Town was not obligated to extend municipal facilities or improvements to the annexed lands as provided in section 40.2.1, the resolution annexing such lands shall contain the same or substantially similar provisions.

40.5.2 Upon the adoption of said resolution of annexation, copies thereof, signed by the President, and certified by the secretary, together with a plot of the area annexed, shall forthwith be filed for record in the office of the Recorder of Deeds in and for Sussex County, and delivered or mailed to the Office of State Planning, the Sussex County Administrator, the Milford School District, the Ellendale Volunteer Fire Company, the Office of State Homeland Security, and the Delaware Department of Transportation; provided however, that the failure to record such resolution, or the failure to deliver or mail a copy thereof to all or any of the agencies specified herein shall not in any way effect the validity of the annexation, but such recording may be enforced by writ of mandamus or mandatory injunction.

40.5.3 Effect of Annexation. From the moment of adoption of the "final" resolution as set forth in section 40.5, the lands so annexed shall be included within the municipal boundaries of the Town and shall be subject to all of the jurisdiction and authority of the Town, the same as any other lands located within the Town's corporate limits.

40.6 Simultaneous annexation proceedings. Provided that such parcels otherwise meet the requirements of this charter for contiguity, nothing herein shall be deemed to require the Town Council to include all contiguous parcels proposed for annexation as one "territory" in one annexation election, but the Town Council may, in its sole discretion, simultaneously conduct an annexation election on each such parcel, or on such combinations of contiguous such parcels, as it deems appropriate; nor shall anything herein prevent the Town Council, in its sole discretion, from combining two or more contiguous parcels proposed for annexation into one "territory" for purposes of conducting an annexation election.

40.7 Re-submission of proposed annexation. Nothing in this section shall prohibit the council from resubmitting a proposal for annexation to the voters of said territory, or any portion thereof, under the authority of this section 40 and in accordance with the provisions hereof.

40.8 Annexation agreements. Notwithstanding any provision in the municipal charter of the Town of Ellendale to the contrary, the Town Council is hereby authorized to enter into annexation agreements with the owners of record of any lands proposed for annexation as a condition precedent to annexation. By way of example and not in limitation, such agreements may address zoning, subdivision approval, site plan approval, tax relief, public utilities, impact fees, completion

and maintenance bonds, and public improvements. No provision of any annexation agreement shall violate the ~~town's~~ Town's comprehensive plan. The Town Planning Commission shall review any annexation agreement submitted and make a report or recommendation thereon to the Town Council no later then the public hearing required by section 40.2.4; provided, however, that if the Planning Commission shall fail to make a report or recommendation by the time of the public hearing, the Town Council may act without such report or recommendation, and, in all events, the Town Council shall not be bound by the report or recommendation of the Planning Commission, but the Town Council shall make the final determination thereon. The Town Council may, with the concurrence of the entity petitioning for annexation, make revisions to the annexation agreement without reconsideration thereof by the Planning Commission. In the event the Town Council approves such an agreement, such annexation agreement, as reviewed and finally approved, shall be deemed a material part of the annexation and shall be included in all applicable subsequent steps of the annexation procedure, that is: (1) the resolutions and notices adopted by the Town Council in connection with any annexation election held pursuant to section 40.4, shall recite that the proposed annexation includes and is subject to an annexation agreement, shall briefly summarize its terms, and shall state that copies of the agreement are available upon request at the ~~town~~ Town hall; (2) the final resolution annexing the territory (as provided by section 40.5) shall recite that the annexation is subject to an annexation agreement and shall incorporate the terms of such agreement by specific reference; and (3) the public notice establishing a 60-day statute of limitations to challenge the annexation (pursuant to section 40.10) shall recite that the annexation is subject to an annexation agreement, shall briefly describe the terms thereof, and state that a copy thereof is available for inspection at the Town Hall. The parties shall be bound to honor the provisions of such agreement unless released therefrom by the other party; provided however, that no annexation agreement made at the time of annexation under this section 40.8 shall extend beyond seven years from the date the property is annexed into the ~~town~~ Town; and such agreements shall be null, void, and unenforceable after the expiration of said seven years.

An annexation agreement may be modified or amended as to minor or non-substantive provisions by mutual agreement of the parties thereto at any time prior to the adoption of the final resolution pursuant to section 40.5; but any significant or substantive modification or amendment shall be deemed to be the submission of a new annexation agreement and shall require that all applicable proceedings, commencing with section 40.2.1, be repeated with the new annexation agreement.

40.9 Property owned by the State of Delaware; highways, streets, roads, alleys, railroads, ponds, canals, streams and other waters.

(a) Real property owned by the State of Delaware may be annexed into the ~~town~~ Town without the State's casting a vote in the special election, provided the state agency having control and supervision thereof does not notify the ~~town~~ Town, in writing, of its objection to such annexation within 30 days after notice of the public hearing.

(b) Highways, streets, roads, alleys, and railroads; ponds, canals, streams, and other waters. Contiguity with the ~~town's~~ Town's existing corporate limits, or with other territory which is itself contiguous with the ~~town's~~ Town's existing corporate limits, shall not be deemed interrupted by the existence of any highway, street, road, alley, railroad, pond, canal, stream, or other body of water running parallel with and between the parcel sought to be annexed, but nothing herein shall be construed to allow rights of way, utility easements, waterways, or like features to be annexed in "corridor" fashion or to be utilized as a corridor route for annexation to create contiguity.

40.10 Limitations. No action contesting the annexation of any territory under this section shall be brought after the expiration of 60 days from the publication of a notice in a newspaper of general circulation in the ~~town~~ Town and in the territory annexed, which notice shall contain the following information:

(a) Notice that the ~~town~~ Town has annexed such territory and a description thereof, together with the designated zoning and, if subject to an annexation agreement, a brief description thereof and a statement that a copy thereof is available for inspection at the Town Hall;

(b) Notice that any person or other legal entity desiring to challenge such annexation must bring his/her/its action within 60 days from the date of publication of such notice or forever be barred from doing so;

(c) Such notice shall be in two-column or "display ad" format and in bold print or bordered in black in such manner as to call attention thereto;

(d) In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (a) and (b) above (using date of "posting" for date of "publication"), to be posted at the Town Hall and in at least two other public places in the ~~town~~ Town. In addition, a copy shall be posted on each parcel of land subject to the annexation in a place viewable to the public.

(e) In the event the publications and/or postings do not appear on the same date, the date of the last publication or posting shall control.

Section 2. If any provision of this Act or the application thereof to any person at circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or applications, and to that end the provisions of this Act are declared severable.