

**BOROUGH OF SUSSEX  
ORDINANCE #2022-20**

**AN ORDINANCE AUTHORIZING THE SALE OF 74 FOUNTAIN SQUARE, SUSSEX  
BOROUGH, SUSSEX COUNTY, NEW JERSEY**

**WHEREAS**, the Mayor and Council of the Borough of Sussex have determined that municipally owned land and improvements thereon known and designated as 74 Fountain Square, Block 702, Lot 2 on the official tax map of the Borough of Sussex, Sussex County, New Jersey (herein after referred to as “property”) is no longer necessary for municipal purposes and as such shall be sold at public sale in accordance with N.J.S.A. 40A:12-13, et seq.; and

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Sussex that the property shall be advertised for public sale pursuant to all requirements and procedures set forth in the Local Lands and Buildings Law (N.J.S.A. 40A:12-1 et seq.) subject to the following conditions:

(a) Bids shall be received by the Borough Clerk on December 15, 2022, at 10:00 A.M. at the Sussex Borough Hall, 2 Main Street, Sussex, NJ 07461 in the manner of a public auction in accordance with procedures to be announced by the Borough Clerk.

(b) All bids shall be referred to the Mayor and Council of the Borough of Sussex for review and final approval pursuant to N.J.S.A. 40A:12-13a. The Borough of Sussex reserves the right to accept the highest bid or to reject any and all bids, including the highest bid, and shall make its decision known by resolution within thirty (30) days after bids are received.

(c) Bidders shall make payment as follows:

Cash or certified check within 20 minutes of the close of bidding	10%
plus Cash or certified check at a closing to be held on or before 45 days after the Mayor and Council of the Borough of Sussex resolves to accept the bid	90%

(d) Upon the close of bidding the highest qualified bidder, as designated by the Borough Clerk, shall submit cash or certified or bank check or money order in the amount of 10% of their bid and shall immediately execute an offer to purchase at their bid price, which offer shall include the terms and conditions specified herein. Said offer shall be irrevocable for sixty (60) days from the date of the public sale.

(e) All conveyances by the Borough shall be made by Quitclaim Deed, unless an adequate title binder, prepared at the expense of the purchaser, is forwarded to the Borough prior to conveyance, in which case Bargain and Sale Deed with Covenants Against Grantor’s Acts will be the form of conveyance. Purchaser shall furnish at their own cost and expense a metes and bounds or other legal description of the property prior to the date of conveyance by the Borough; otherwise, the conveyance by the Borough shall be made by Quitclaim Deed and by utilization of tax lot and block designations. The Deed shall be delivered upon final payment to be made as described in (c) above at a closing to be arranged between the purchaser and the Borough of Sussex pursuant hereto.

(f) At closing of title, purchaser shall submit an additional sum of \$350 to cover legal services incurred by the Borough plus an amount sufficient to pay the cost of recording the Deed and realty transfer fee. Failure to close on or before 45 days after the Mayor and Council of the Borough of Sussex resolve to accept the bid shall entitle the Borough of Sussex to rescind prior bid approval, terminate any and all rights of the designated bidder in said property and retain all monies theretofore deposited.

(g) Bids shall be received for the property subject to the requirements that no bid for a price of less than \$159,900 shall be eligible for consideration. Each bidder shall submit a separate bid for both Option I and Option II (**failure to submit a bid for each option shall disqualify the bid**) in accordance with the following:

1. OPTION I shall be subject to the following conditions: Title to the property shall be conveyed subject to the following restrictions and covenants which shall be incorporated in the Deed to the successful bidder:

This conveyance is expressly made subject to the following reversionary restrictions and covenants:

(1) Grantee expressly agrees for itself, its representatives, successors and assigns that the above-described lands and premises are being conveyed for and shall be used solely and exclusively for the purposes of Grantee organization which are principally for the provision of recreational services; i.e., specifically for the production and presentation of plays, performances, shows, concerts and artistic displays for and/or with participation of the general public, including residents of the Borough of Sussex; and that the above-described lands and premises shall not be used for commercial business, trade or manufacture; and that, if the above-described lands and premises are not used in compliance with said limitations and requirements or if there shall be any change of ownership therein without the express written consent of Grantor, which shall not be unreasonably withheld, then title to the above-described lands and premises shall automatically and by operation of law revert to Grantor without any entry or reentry made thereon on behalf of Grantor and without the necessity or requirement of Grantor, its representatives, successors and/or assigns first declaring default;

(2) Within 120 days of the date of delivery of this Deed from Grantor to Grantee, which deadline may be extended at Grantee's request, but in Grantor's sole discretion, for no more than 60 days, Grantee shall secure a permanent Certificate of Occupancy for the structure located on the subject property. If the above-described lands and premises are not used in compliance with said limitations and requirements, then title to the above-described lands and premises shall automatically and by operation of law revert to Grantor without any entry or reentry made thereon on behalf of Grantor and without the necessity or requirement of Grantor, its representatives, successors and/or assigns first declaring default; and

(3) Grantee expressly agrees for its representatives, successors and assigns that it will not convey title to the subject lands and premises to a party or person other than Grantor without the express written consent of Grantor, which shall not be unreasonably withheld.

2. OPTION II shall be free of the conditions set forth in paragraph g(1).

(h) The subject property has been examined by professionals on behalf of the Borough of Sussex and found to be unsafe and containing environmental hazards. Accordingly, a successful bidder shall have 30 days after the Borough Council resolves to accept their bid to conduct tests, make inquiries and rescind their bid by notice in writing delivered to the Borough Clerk setting forth the specific basis for the rescission accompanied by proof thereof. The 30-day deadline may be extended at the request of the successful bidder, but in the sole discretion of the Borough, for up to 15 days. Notwithstanding terms to the contrary herein, if an extension is so granted, the closing date shall likewise be extended for the same amount of time. To be eligible for rescission per this paragraph, the specific basis must be that the cost of remediating existing hazardous material shall exceed the sum of \$15,000. Notwithstanding any language to the contrary set forth herein: If rescission is properly made per this paragraph, the bid shall be deemed to be void, the payments made to the Borough in connection with the bid will be refunded, and neither party shall have further liability to the other in connection therewith. As a condition for rescission, the bidder shall deliver copies of all test and inspection reports and estimates upon which the successful bidder relies for its decision to rescind to the Borough Clerk at no charge.

(i) The purchaser shall be responsible for terminating any and all existing tenancies (if any) post-closing.

(j) The property shall be conveyed subject to existing encumbrances, liens, zoning regulations, easements, restrictions, such facts as an accurate survey and inspection of the lands and premises would reveal, and any present or future assessments for the construction of improvements benefiting said property. The property is being sold in the present “as is”, “where is”, with all faults. No representations of any kind are made by the Borough as to acreage, quality of title or conditions of the property, and descriptions of the property are intended as a general guide only and may not be accurate. The Borough disclaims and the purchaser shall waive any and all warranties, express or implied, with regard to the acreage, conditions, uses and quality of the subject lands and premises, and the foregoing disclaimer and waiver will survive closing.

(k) In the event the Borough is unable to convey clear and marketable title, insurable at regular rates by a title insurance company licensed to do business in the State of New Jersey, the Borough will forthwith return to the purchaser any and all deposit moneys previously submitted by the purchaser, and neither party shall have any further rights against the other. Notice of any alleged defect in title or claim of unmarketability must be served on the Borough Clerk by the purchaser, in writing no later than 20 days after the sale is approved by the Mayor and Council of the Borough of Sussex; and failure upon the part of the purchaser to give written notice within said time shall be deemed conclusive proof that the purchaser accepts the title in its present condition. Further, the acceptance of a deed by the purchaser from the Borough shall extinguish any claims that said purchaser may have against the Borough of Sussex in connection with the quality of title conveyed.

(l) At closing, the purchaser shall verify in writing that purchaser shall indemnify and hold harmless the Borough of Sussex, its officials, employees, representatives and agents, as to all claims, expenses, damages, attorney’s fees and costs related to or arising out of the condition of the property.

(m) Successful bidders agree to pay by the time of closing the balance of the purchase price, the cost of advertisement of the sale, the cost of recording Deeds, which shall be recorded by the Borough Attorney, and all prorated real estate taxes for the balance of the current year as of the date of closing, together with \$350 for the cost of preparation of all legal documents. Successful bidders agree to abide by appropriate zoning, subdivision, health and building regulations and codes and stipulations that this sale will not be used as grounds to support any variance from or realization of said regulations. Successful bidders agree that the purchase price shall not be used before any County Board of Taxation, Tax Court of New Jersey, or in any Court of this State as grounds to support a challenge of the existing assessment of the subject property, nor shall the purchase price be used as a comparable sale to challenge assessments with regard to other properties.

(n) The Borough reserves the right to waive any and all defects and informalities in any proposal and to accept or reject the highest responsible and responsive bid deemed to be in the best interest of the Borough. No bid shall be considered finally accepted until passage of a resolution by the Mayor and Council of the Borough of Sussex accepting same.

(o) The sale is made subject to all applicable laws, statutes, regulations and ordinances of the United States, State of New Jersey and the Borough of Sussex.

(p) No employee, agent or officer of the Borough of Sussex has any authority to waive, modify or amend any of the conditions of the sale.

(q) A public notice of sale shall be published in the Borough’s official newspaper at least once a week for two consecutive weeks, the last publication being no earlier than seven (7) days prior to the date set forth for the public sale, which notice shall contain the conditions of this sale in accordance with N.J.S.A. 40A:12-13(a).

This Ordinance shall take effect upon final passage, approval and publication as required by law.

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Antoinette Smith, Borough Clerk

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Edward Meyer, Mayor

**NOTICE**

NOTICE IS HEREBY GIVEN that the attached Ordinance 2022-20 was introduced at a regular meeting of the Mayor and Council of the Borough of Sussex, Sussex County, New Jersey, held on October 18, 2022 and passed on first reading, and that such Ordinance will be further considered for final passage and adoption at the regular meeting of the Mayor and Council to be held on November 1, 2022 at Borough Hall, 2 Main Street, in the Borough of Sussex at 7:00 p.m. or via the internet, connectivity information available at [www.sussexboro.com](http://www.sussexboro.com) and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance.

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**Antoinette Smith, RMC**