

BOROUGH OF RIVERDALE

ORDINANCE NO. 13-2007

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY (PORTION OF BLOCK 40, LOT 6.01 AS SHOWN ON THE TAX MAP OF THE BOROUGH OF RIVERDALE) OWNED BY THE BOROUGH OF RIVERDALE, MORRIS COUNTY, NEW JERSEY, NOT REQUIRED FOR PUBLIC PURPOSES PURSUANT TO N.J.S.A. 40A:12-13, ET SEQ. TOGETHER WITH AN ASSIGNMENT OF A LEASE ON THE SUBJECT PROPERTY

WHEREAS, the Local Lands and Buildings Laws, N.J.S.A. 40A:12-13, et seq., authorizes the sale by municipalities of any real property, capital improvements or personal property, or interests therein, not needed for public use by sale in the manner provided by law; and

WHEREAS, the Borough of Riverdale is the owner of certain real property not needed for public use which contains a 150 foot wireless telecommunication tower or monopole along with certain wireless communications equipment and is leased to Sprint Spectrum L. P., under a written lease available for inspection in the office of the Borough Clerk, and the Mayor and Council have determined that it is in the best interest of the Borough to sell the same;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Riverdale, in the County of Morris and State of New Jersey, as follows:

Section 1. The following property shall be offered for sale, pursuant to N.J.S.A. 40A:12-13 at auction to the highest bidder. The auction shall be held at the Riverdale Borough Municipal Building at a date to be set by the Borough Clerk and published in accordance with law:

Property located at Route 23 and Matthews Avenue, Riverdale, New Jersey also known as a portion of Block 40, Lot 6.01 on the Official Tax Map of the Borough of Riverdale which is an area of approximately 3,750 square foot surrounding a communications support structure built pursuant to the Sprint Spectrum Lease.

The property is more particularly described as follows:

The approximate location of the four corners of the cell tower site behind Home Depot in New Jersey State Plane Coordinates is:

X (Easting) / Y (Northing)

540,354 / 786,395

540,401 / 786,373

540,367 / 786,307

540,318 / 786,329

The approximately dimensions of the rectangular cell site is 50-ft X 75-ft.

Section 2. The suggested minimum bid for this lot shall be \$1,000,000.00.

Section 3. The described property shall consist of the above described portion of Block 40, Lot 4, in the Borough of Riverdale together with all rights under the Sprint Spectrum lease. The property sale shall include an access easement over a portion of the remainder of the property owned by the Borough of Riverdale.

Section 4. The property sold shall be subject to the following terms of sale:

1. That no representations of any kind are made by the Borough of Riverdale as to the condition of the property, said premises are being sold in their present condition "as is";

2. That the Borough will execute a definitive Deed, Easement Agreement and Assignment of Lease mutually acceptable in form and substance to both parties;

3. That the Buyer, at its sole expense, shall have a right to conduct environmental and other inspections of the Property with results satisfactory to Buyer and its lender but must complete such inspections within thirty (30) days of bid acceptance;

4. That the Buyer shall obtain a survey of the entire tract including the portion being sold, which said survey will be at Buyer's sole expense, in form and substance satisfactory to the Borough and the Buyer; and said survey shall be certified to the Borough.

5. Buyer's receipt of a title commitment, which said title commitment will be at Buyer's sole expense, with respect to the Property, to be obtained, stating that Seller has good, indefeasible and marketable fee simple title to the Property, free and clear of all liens and encumbrances except such matters as may be acceptable to Buyer and

6. The performance, by Buyer, of a zoning analysis, at Buyer's sole expense, to determine the legality/validity of the use of the property and the impact as it relates to the proposed Acquisition, with results satisfactory to Buyer and its lender. Any approvals determined by the Buyer to be necessary shall be obtained by the Buyer at the Buyers cost and expense.

7. Pursuant to the Lease, Seller currently possesses a right, at no cost to Seller, to install Seller's municipal and emergency antennas and equipment on the wireless telecommunication tower or monopole. It is understood and agreed by both Seller and Buyer that Seller shall maintain this right, as described in the preceding sentence and the applicable section of the Lease, by entering into a letter agreement with Lease tenant, at or prior to closing, for the reservation, retention and/or possession, at no cost to Seller, of the right described in this section of the Letter Agreement.

8. It is understood that the Acquisition is subject to applicable New Jersey law concerning disposition of municipal real estate.

9. The Borough represents and warrants as of the date of this Letter Agreement that:

a. it has no knowledge of any pending or threatened condemnation proceedings or other proceedings in the nature of eminent domain in connection with the Property;

b. it has no knowledge of any special or general assessment levied, pending or threatened against the Property;

c.. here is no litigation or proceedings pending, or to Seller's knowledge threatened, against or relating to the Property.

Section 5. The sale is made subject to such state of facts as an accurate survey may disclose, existing tenancies, rights of persons in possession, easements, conditions, covenants and restrictions and any other encumbrances of title which the Mayor and Council may impose on any parcel at the time of the sale, including but not limited to restrictions on the use to be made of such real property, capital improvements of personal property and any conditions of sale as to buildings or structures, or as to the type, size or other specifications of buildings or structures to be constructed thereon, or as to demolition, repair or reconstruction of buildings or structures, and the time within such conditions shall be operative, or any other conditions of sale in like manner to the same extent as by any other vendor.

Section 6. The sale is made subject to all applicable laws and ordinances of the State of New Jersey and the Borough of Riverdale.

Section 7. That should the title to the property prove to be unmarketable for any reason, the liability of the Borough shall be limited to the repayment to the purchaser of the amount of deposit and any portion of the purchase price paid and shall not extend to any further costs, expenses, damages or claims. 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 thirty (30) days after the sale is approved by the Mayor and Council, 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.

Section 8. That no employee, agent or officer of the Borough of Riverdale has any authority to waive, modify or amend any of the conditions of sale.

Section 9. Successful bidders agree to the following conditions:

- i. To deposit cash, check or money order in an amount not less than 25% of the bid price at the time that the bid is submitted.
- ii. To pay by the time of closing:
 - a. The balance of the purchase price.
 - b. The cost of preparation of all legal documents, including any special property description.
- iii. To pay prorated real estate taxes for the balance of the current year as of the date of closing.
- iv. 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 these regulations.
- v. That the failure to close title as agreed shall forfeit to the Borough of Riverdale any and all money deposited with the Borough.
- vi. 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.

Section 10. The Borough reserves the right to withdraw the offer of sale and reject any and all bids.

Section 11. All sales are subject to final approval by the Mayor and Council. Parties interested in submitting bids and who require additional information should contact:

Carol Talerico, Borough Clerk
Borough of Riverdale
Riverdale, New Jersey

Section 12. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 13. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 14. This ordinance shall take effect immediately after final passage and publication in the manner provided by law.

Adopted this ____ day of
_____, 2007

Carol Talerico, Borough Clerk

William Budesheim, Mayor

CLERK'S CERTIFICATION

NOTICE is hereby given that the above Ordinance was introduced and passed first reading by title at a regular meeting of the Mayor and Council of the Borough of Riverdale, held on October 1, 2007, and it will be considered for final passage at a regular meeting of said Mayor and Council to be held on October 15, 2007, at 7:30 p.m. or as soon thereafter same can be considered, in the Municipal Building, 91 Newark Pompton Turnpike, Riverdale, New Jersey, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning same. During the week prior and up to the time of public hearing, copies of said Ordinance will be available to the members of the general public who request same, in the Borough Clerk's Office between the hours of 9:00 a.m. and 4:30 p.m.

Carol J. Talerico, R.M.C.
Municipal Clerk