

ORDINANCE OF THE TOWNSHIP OF LAKEWOOD, COUNTY OF OCEAN, AND STATE OF NEW JERSEY, AUTHORIZING THE PUBLIC SALE OF BLOCK 423, LOT 156.01 IN THE TOWNSHIP OF LAKEWOOD, COUNTY OF OCEAN, AND STATE OF NEW JERSEY, AT PUBLIC SALE PURSUANT TO N.J.S.A. 40A:12-1 ET SEQ. AND A SETTLEMENT AGREEMENT BETWEEN HIGH POINT AT LAKEWOOD CONDOMINIUM ASSOCIATION, INC., AND THE TOWNSHIP OF LAKEWOOD.

WHEREAS, the Township of Lakewood (hereinafter “Township”) is the owner of 136 phantom residential condominium units that are part of the Highpoint Condominium complex, pursuant to an Appellate Division decision in *Highpoint at Lakewood Condominium Ass’n, Inc. v. Township of Lakewood*, Superior Court, Appellate Division, Docket # A-2118-13T2; and

WHEREAS, the High Point at Lakewood Condominium Association, Inc. (hereinafter “High Point”) is the owner of approximately 9.96 acres of land denominated at Block 423, Lot 156.01 (the “undeveloped parcel”) at the Highpoint Condominium complex; and

WHEREAS, the Township’s ownership of 136 phantom units as ruled by the Superior Court Appellate Division, is a result of appeals from a Complaint to Quiet Title filed by Highpoint Condominium Association, Inc., against Lakewood which, *inter alia*, also challenged the Township’s ownership of the 136 phantom units obtained via final judgment on tax liens, duly recorded in the Ocean County Clerk’s Office at Deed Book 3969, Page 205; and

WHEREAS, the decision by the Appellate Division resulted in a remand back to the Trial Court to determine uncertain obligations between the parties including but not limited to obligation by the Township to pay common area assessments ; and

WHEREAS, as High Point and the Township, pursuant to Lakewood Township Resolution 2016-422, agreed to a settlement of the litigation pursuant to the Settlement Agreement between the parties that requires the Township to hold a public auction to sell the 9.96 acre undeveloped parcel with a reserve price of \$900,000.00 per acre, and the net proceeds from the public auction to be divided between High Point at Lakewood Condominium Association and the Township of Lakewood in accordance with said Settlement Agreement and Resolution 2016-422; and

WHEREAS, the Township Committee of the Township of Lakewood has determined that it is in the best interest of the Township to fulfill the terms of the Settlement Agreement and offer this property for sale by public auction to the highest bidder with a reserve of \$900,000.00 per acre, by way of the submission of sealed bids to the Township Manager in lieu of a live public auction.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Lakewood, County of Ocean, State of New Jersey, as follows:

SECTION 1. The Township of Lakewood and Highpoint at Lakewood Condominium Association, Inc., are the owners of the aforementioned 9.96 acres of land and phantom units denominated as Block 423, Lot 156.01 in the Township of Lakewood (hereinafter referred to as

the property) .

SECTION 2. The Township Committee has determined that it to be in the public interest to sell the “Property” by public sale auction to the highest bidder in accordance with N.J.S.A. 40A:12-13(a) and the Settlement Agreement between Highpoint and Lakewood as forementioned.

SECTION 3. The Township Committee declares that the Municipality’s interest in the property to be surplus and not needed for public use.

SECTION 4. The following conditions are for the sale of the property apply:

- a. The minimum bid for the property is \$900,000.00 per acre or \$8,964,000.00.
- b. The highest bidder will be the purchaser subject to the provisions below.
- c. The Township will only accept bids calling for an all cash purchase of the Property. Full payment of the purchase price must be received within 30 days of the date of acceptance of the bid. The successful bidder will be required to pay, by either cash or wire transfer or bank check, a deposit equal to ten (10%) percent of the minimum price of the bid at the close of bidding, with the balance to be paid by either cash, wire transfer or bank check at closing. Pending closing, of title, this deposit will be held by the Township of Lakewood in a non-interest bearing escrow account, with the total deposit (excluding interest) to be credited to the purchase price at closing.
- (d) The sale of the Property is being made subject to the terms, conditions, restrictions and limitations of a Contract of Sale, which is on file with the Municipal Clerk, including but not limited to the following terms and conditions:
 - 1) The Property is being sold in an “AS IS” WHERE-IS” condition. The successful bidder is responsible for conducting any and all inspections and testing of the Property at its own cost and expense.
 - 2) The Property is being sold subject to existing zoning; however, prospective bidders should be aware that the Township has adopted a Smart Growth Plan which could require future changes in zoning for the Property. A copy of the Smart Growth Plan can be reviewed in the office of the Township Clerk.
 - 3) The successful bidder shall bear the burden of paying any and all required sewer service and/or connection fees associated with the use of the Property.
 - 4) The successful bidder shall pay prorated real estate taxes for the balance of the current year as of the date of closing of title.
 - 5) The successful bidder shall bear the burden of obtaining any and all approvals from the appropriate municipal, county or government agency, if applicable. The successful bidder shall also bear the burden of obtaining and paying for any and all necessary permits,

connections and/or arrangements to provide for water, electric, sewer, or solid waste disposal.

- 6) The closing of title to the Property is "TIME OF THE ESSENCE" and must take place within 30 days of the date of acceptance of the bid and the failure of the successful bidder to close title as agreed shall result in the successful bidder's forfeiture of any and all money deposited with the Township.
- 7) The purchaser(s) shall pay the cost of recording fees.
- 8) The purchaser(s) shall pay any and all realty transfer and "mansion" taxes assessed in connection with the sale of the Property.
- 9) With respect to the sale of the Property herein, NO real estate commission is owed.
- 10) No representation is made by the Township or High Point as to the utility, usability or environmental condition of the Property.

(e) All bids must satisfy any requirements and meet any terms and conditions of the Contract of Sale. The successful bidder will execute the Contract upon completion of bidding and its payment of the required deposit. To execute the Contract, the bidder shall properly execute the Contract in the signature spaces at the end. Failure to execute the Contract properly shall not affect the obligation of the successful bidder or the validity of the sale. The deed given by Lakewood Township and High Point for the Property will be a bargain and sale deed without covenants. No title contingencies or conditions are permitted.

(f) In the event that the successful bidder fails to close title to the Property, the bidder shall forfeit all deposit monies made to the Township. No refunds whatsoever will be made by the Township of Lakewood in the event that the successful bidder fails to complete the purchase of the Property within thirty (30) days from the acceptance of the bid.

(g) The sale shall be subject to adjournment or cancellation by the Township Committee.

(h) The Township reserves the right to accept the highest responsive bid if equal to or greater than the minimum bid price, or to reject all bids at the public sale and not to award to the highest bidder. The Township 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 Township.

(i) The Township's acceptance or rejection of bids shall be made not later than at the second regular Township Committee meeting following the auction. No bid shall be considered finally accepted until passage by the Township Committee of a Resolution accepting such bid.

(j) The Property is being sold "AS IS" "WHERE IS." The Property is sold subject to existing encumbrances, liens, easements, zoning ordinances, other restrictions of record, such facts as an accurate survey would reveal and any present or future assessments for the construction of improvements benefiting the Property. A survey of the Property may be conducted by any prospective bidder, at its discretion, as part of its due diligence.

(k) Any material prepared and distributed in connection with this auction sale is for convenience purposes only and is intended to give prospective bidders a general understanding of the condition, location and size of the Property. Neither the Township of Lakewood nor High Point is responsible for errors that may appear in such materials. Each prospective bidder is urged to thoroughly research and examine the Property prior to placing a bid. The Property will be available for inspection by appointment only. Prospective bidders desiring to inspect the Property should contact Lauren Kirkman, Township Clerk at (732) 364-2500 ext. 5970 between the hours of 9:00 a.m. and 3:00 p.m. to make an appointment.

(l) It is suggested and recommended that potential bidders perform title searches and/or last owner and lien searches on the properties that they are interested in bidding upon prior to the date of bid submission in order that the potential bidder may be adequately apprised of any encumbrances or restrictions of record affecting the use and enjoyment of the property or properties. It is further suggested and recommended that potential bidders exercise due diligence with respect to every state of facts including open permits, local fines, penalties, taxes, assessments, etc., which may not be of record but which may nonetheless affect the use and enjoyment of the property or properties. The Township of Lakewood shall not be responsible for the costs associated with such searches in the event that the Township of Lakewood is unable to convey title and/or if a bid is rejected.

SECTION 5. That a notice and a certified copy of this Ordinance shall be posted on the bulletin board or other conspicuous place in the municipal building and published in the authorized newspaper of the municipality.

SECTION 6. That any offer(s) for the Property may thereafter be made to the Municipal Manager for a period of twenty (20) days following the newspaper advertisement, for not less than the minimum price provided herein.

SECTION 7. That if more than one bid is received, the Municipal Manager may hold such bids without opening, advise the Township Committee of such multiple bids, and the Township Committee shall decide whether to invite said bidders to a public meeting via Zoom or Web Ex for purposes of an open auction between the original submitting bidders, or to open said original bids.

SECTION 8. That, if sold, the Property shall be awarded to the highest bidder in excess of the minimum bid price for the Property.

SECTION 9. That the Township Committee of the Township of Lakewood may reconsider its decision to sell the subject Property within thirty (30) days after the enactment of

this Ordinance and either offer the Property for sale at a public sale pursuant to *N.J.S.A. 40A:12-13* (a) or reject any or all bids and retain any or all of the Property for Township use.

SECTION 10. That all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 11. If any section, subsection, paragraph, sentence or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance not directly involved in the controversy in which such judgment shall have been rendered.

SECTION 12. This Ordinance shall take effect upon final passage and publication in accordance with law.

Introduced:

Adopted:

CERTIFICATION

I, Lauren Kirkman, Township Clerk of the Township of Lakewood, do hereby certify the foregoing to be a true and exact copy of the ordinance which was adopted by the Township Committee of the Township of Lakewood at a meeting held on the _____ at 5:30 P.M., at the Municipal Building, located at 231 Third Street, Lakewood, NJ 08701.

Lauren Kirkman, RMC, CMC, CMR
Lakewood Township Clerk