

**BOROUGH OF EMERSON
COUNTY OF BERGEN
NOTICE OF ADOPTION**

ORDINANCE NO. 1437-11

Introduced: September 20, 2011

Adopted: October 18, 2011

NOTICE IS HEREBY GIVEN that the following ordinance was adopted on the second reading after a Public Hearing at the Regular Meeting of the Borough Council of the Borough of Emerson on the 18th day of October 2011. A copy of Ordinance 1437-11 is on file in the Borough Clerk's Office in the Municipal Building, 1 Municipal Pl., Emerson, NJ 07630.

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN MUNICIPAL PROPERTY (A PORTION OF BROADWAY AVENUE WHICH IS A PAPER STREET LOCATED ON THE WEST SIDE OF SPRUCE STREET BETWEEN BLOCK 509 & 515 AS SHOWN ON THE TAX MAP OF THE BOROUGH OF EMERSON), OWNED BY THE BOROUGH OF EMERSON, COUNTY OF BERGEN, STATE OF NEW JERSEY, NOT REQUIRED FOR PUBLIC PURPOSES PURSUANT TO N.J.S.A. 40A:12-13, ET SEQ.

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 Emerson is the owner of certain real property not needed for public use which is undersized for development in the zone in which it is located, 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 Emerson, in the County of Bergen and State of New Jersey, in accordance with N.J.S.A. 40A:12-13(b)(5), the undersized lot identified herein shall be sold by private sale to the highest bidder among all adjacent property owners, said sale being made expressly subject to the following terms and conditions:

Section 1. The property hereinafter identified shall be offered for private sale, pursuant to N.J.S.A. 40A:12-13, to the highest bidder among all contiguous property owners, provided that the highest bid received is not less than fair market value:

Property located the paper street known as Broadway on the west side of Spruce Street between Block 509 & 515 Emerson, New Jersey on the Official Tax Map of the Borough of Emerson which is an area of approximately 6,000 square feet of vacant land without any capital improvements thereon.

The approximately dimensions of the rectangular site are 60 feet in width by 100 feet in length, for a total area of 6,000 square feet.

Section 2. Based upon an appraisal conducted by McNerney & Associates, Inc., the minimum bid for this lot, which represents fair market value for the premises, shall be \$210,000.00.

Section 3. This lot is being sold subject to the express condition that it shall merge with and become a part of the adjacent lands of the Buyer and it shall for all future purposes be considered as one parcel. The successful bidder shall present to the Borough Clerk, two weeks prior to closing, a copy of the Deed for the contiguous property. The Deed of Conveyance of this property shall contain the following restrictions which shall be binding upon the heirs, successors and/or assigns as the Grantee of such property:

“The within lands shall be merged with the lands commonly known as Block 515 Lot 5, part 2 of a ‘paper street’ commonly known as “Broadway”, a small break between Lot 2 of Block 515 and Lot 5 of Block 509, which lands are owned by the Grantee hereof. Said Land shall hereafter not be used or subdivided in any way except as part of a conforming lot being used in conformance with the use and bulk regulations set forth in the Emerson Land Use Ordinance as may be amended from time to time.”

Section 4. All bids shall be submitted as sealed bids clearly indicating on the face of the envelope that it is a bid for PURCHASE OF PORTION OF BROADWAY and shall be submitted on or before November 3 2011 at 11:00 a.m. All bids shall be referred to the Borough Council for review and final approval pursuant to N.J.S.A. 40A:12-13. The Borough Council reserves the right to withdraw the offer of sale or to reject any or all bids.

Section 5. Potential Bidders shall further abide by the following terms and conditions:

A. All Bidders shall conduct all necessary title searches prior to the date of the sale.

B. The descriptions of the properties are intended as a general guide only and may not be accurate. No representations of any kind are made by the Borough of Emerson as to the conditions of the property; the premises are being sold in their present conditions “as is”. All lots are conveyed subject to existing encumbrances, liens, zoning regulations, easements, other restrictions, such facts as an accurate survey would reveal and any present or future assessments for the construction of improvements benefiting said property.

C. 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.

D. 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.

E. This sale is made subject to all applicable laws, statutes, regulations and ordinances of the United States, State of New Jersey and the Borough of Emerson, including, without limitation, those concerning disposition of municipal real estate.

F. No employee, agent or officer of the Borough of Emerson has any authority to waive, modify or amend any of the conditions of the sale.

G. All offers for the property specified shall be made for a sum equal to or greater than the minimum bid price listed in Section 2 of this ordinance.

H. The property shall be conveyed by a Quit Claim Deed and such conveyance shall be subject to all covenants, restrictions, reservations and easements established of record or by prescription and without representation as to character of title of the property to be conveyed.

I. The successful bidder shall deposit cash, check or money order in the amount of not less than 10% of the bid price at the time of the close of bidding. In the event the successful bidder fails to deposit 10% of the bid price at the time of the close of bidding, the Borough will re-bid the property. In such circumstances, the original successful bidder shall be responsible to the Borough for any difference between its bid and the final sale bid, in the event such bid is lower than the bid of the original successful bidder.

J. The Buyer shall pay at the time of closing:

- (1) The balance of the purchase price;
- (2) Legal fees incurred by the Borough for transfer of title, including the cost of production of legal documents;
- (3) The cost of advertisement of the sale;
- (4) The cost of recording the deed, with an agreement that said deed shall be recorded on behalf of the Buyer by the Borough Attorney; and
- (5) Prorated real estate taxes for the balance of the current year as of the date of closing.

K. The Buyer shall covenant and agree to abide by appropriate zoning, subdivision, health and building regulations and codes and shall stipulate that this sale will not be used as grounds to support any variance from the regulations.

L. 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 assessments with regard to other properties.

M. The title shall close on or before the 60th day after the date set for the receipt of bids in Section 4 of this Ordinance, and that date shall be considered time of the essence. The Buyer's failure to close title as set forth herein shall forfeit to the Borough of Emerson any and all money deposited with the Borough.

N. Parties interested in submitting bids and who require additional information, should contact Carol Dray, Borough of Emerson Clerk, Municipal Building, 1 Municipal Place, Emerson, New Jersey 07630.

Section 6. The Borough does not warrant or certify title to the property and in no event shall the Borough of Emerson be liable for any damages to the Buyer/successful bidder if title is found unmarketable for any reason and the Buyer/successful bidder waives any and all right in damages or by way of liens against the Borough, the sole remedy being the right to receive a refund, prior to closing, of the deposit paid in the event title is found unmarketable. It shall be the obligation of the successful bidder to examine title to the premises prior to the closing. Notice of any alleged defect in title or claim of unmarketability must be served on the Borough Clerk, by the Buyer, in writing no later than thirty (30) days after the sale is approved by the Mayor and Council. Failure upon the part of the Buyer to give written notice within said time shall be deemed conclusive proof that the Buyer accepts the title in its present condition, and the Borough shall not be responsible for any subsequent claims of defect in title and shall not be required to refund money or correct any defect in title or be held liable for damages.

Section 7. The Borough's acceptance of a bid shall constitute a binding agreement of sale, and the Buyer shall be deemed to agree to comply with the terms of conditions of the sale herein contained.

Section 8. In the event no adjacent property owner submits a bid equal to or greater than the minimum bid price as provided for in Section 2 of this Ordinance, or in the event two or more adjoining property owners submit identical high bids which meet or exceed the bid price, there shall be a re-bid for this property, at a date and time as established by the Borough Clerk. All other terms and conditions of this Ordinance shall apply to the re-bid.

Section 9. 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 10. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 11. This ordinance shall take effect immediately after final passage and publication in the manner provided by law.

ATTEST:

CAROL DRAY, RMC, CMC
Borough Clerk

CARLOS COLINA, Mayor