

Mr. Card offered the following Ordinance and moved on its final reading and adoption:

**BOROUGH OF HIGHLANDS
COUNTY OF MONMOUTH
ORDINANCE NO. O-15-23**

**AN ORDINANCE AUTHORIZING THE PRIVATE SALE OF CERTAIN PROPERTY
OWNED BY THE BOROUGH OF HIGHLANDS NOT REQUIRED FOR PUBLIC
PURPOSES PURSUANT TO N.J.S.A. 40A:12-13, ET SEQ.**

WHEREAS, N.J.S.A. 40A:12-13(b)(5) authorizes local governmental units to sell real property owned by the governmental unit, not needed for public use, by private sale, to the owner of the real property contiguous to the real property being sold provided that the property being sold is less than the minimum size required for development under the Borough's zoning ordinance and is without any capital improvement thereon; and

WHEREAS, N.J.S.A. 40A:12-13.2 requires a municipality, when it intends to sell real property which is less than the minimum size required for development under the municipal zoning ordinance and is without any improvements thereon, to accord the owner or owners of any real property contiguous to such real property the right to prior refusal to purchase the land; and

WHEREAS, when there is more than one continuous property owner, N.J.S.A. 40A:12-13(b)(5) requires a local governmental unit to first offer to sell the real property to the highest bidder from among all such contiguous property owners; and

WHEREAS, the sale price shall be for not less than the fair market value of said real property; and

WHEREAS, the Borough is the owner of real property identified as Block 109, Lot 10 ("the Property") on the Official Tax Map of the Borough of Highlands; and

WHEREAS, the Governing Body has determined that the Property is not needed for public use; and

WHEREAS, an appraisal report prepared for the Property determined that the Property's fair market value is five thousand six hundred dollars (\$5,600.00), that the Property is less than the minimum size required for development under the Borough's zoning ordinance, and is without any capital improvement thereon; and

WHEREAS, the Governing Body has determined that it is in the public interest that Lot 109, Block 10 be sold to the highest bidder from among all owners of real property contiguous to the Property for an amount not less than the fair market value of the Property, which is five thousand six hundred dollars (\$5,600.00); and

WHEREAS, the Governing Body has determined that the list of property authorized to be sold pursuant to this Ordinance and N.J.S.A. 40A:12-13, et seq. is: Block 109, Lot 10 (Lot

size is approximately 3,193.00 square feet) at a minimum price of \$5,600.00, said amount being not less than fair market value; and

WHEREAS, in accordance with N.J.S.A. 40A:12-13(b)(5) and N.J.S.A. 40A:12-13.2, the opportunity to bid will be available to all contiguous property owners and the Property shall be sold to the highest bidder from among all such contiguous property owners for not less than the fair market value.

NOW THEREFORE BE IT ORDAINED, by the Governing Body of the Borough of Highlands, the County of Monmouth, in the State of New Jersey, as follows:

Section 1.

(a) The Governing Body hereby declares that the Property is no longer needed for public use and should be sold in accordance with N.J.S.A. 40A:12-13, et seq.

(b) The Governing Body hereby authorizes the Borough Clerk to offer the Property for sale to the highest bidder among continuous property owners by sealed bid, for not less than the fair market value of the Property, which is five thousand six hundred dollars (\$5,600.00).

(c) Any owner of real property contiguous to the Property may submit a sealed bid to the Borough Clerk on or before 11:00 a.m. on September 11, 2015 at the Temporary Borough Hall, 42 Shore Drive, Highlands, New Jersey. The bid must be accompanied by a deposit made payable to the Borough of Highlands in the form of cash, bank check, or cashier's check in the amount of 10% of the total bid. The combined form of deposit must equal ten (10%) percent of the total sale price. All monies so received will be credited to the total sale price.

(d) The sale, if not canceled, shall take place by sealed bid and by private sale to the highest bidder among the owners of property contiguous to the Property. The minimum bid shall be \$5,600.00.

(e) Any person bidding on behalf of a corporation or limited liability company must either submit a copy of a resolution of the corporation/company or a letter on corporate stationery, signed by an officer of the corporation, authorizing the bidder to bid on the property on the corporation's behalf. A person bidding on behalf of a partnership or using a trade name must submit a copy of the certificate of trade name and a letter of authorization from the other partners. No other bidder may submit a bid on behalf of another, except that a husband or wife may bid on behalf of both.

(f) The successful bidder, at the conclusion of the bidding, shall execute an Agreement of Sale. The balance of the purchase price shall be paid at closing which shall occur not later than 60 days following the acceptance of the bid by the Borough. The purchaser shall be entitled to possession immediately following closing of title.

(g) The successful bidder shall be required to pay, at the time of closing of title, the cost of legal advertising of the sale of the Property which is the subject of this sale plus their proportionate cost of the transcript, if applicable.

(h) The successful bidder shall bear the cost of the recording of the deed and agrees that deeds shall be recorded on behalf of the purchaser by the Borough of Highlands or by an attorney representing the successful bidder. The successful bidder, prior to closing of title, will not be permitted to assign his or her bid nor any right, title or interest in the property on which the bid was made.

(i) In the event the Borough is unable to convey 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. The acceptance of a quitclaim deed by the purchaser from the Borough shall extinguish any claims that said purchaser may have against the Borough in connection with the quality of title conveyed.

(j) The Property herein sold is being sold "as is" 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 said property. The Borough makes no representations as to the presence or absence of wetlands or any other environmental conditions on the property and the purchaser assumes the risk of any such condition, all property being sold "as is." A prospective purchaser shall have examined the Property or otherwise waived the right to examine the Property prior to submitting the stated bid to the Borough. The Borough does not make any representations, express or implied, that the Property is buildable or usable for any purpose whatsoever.

(k) The Borough represents that the property which is the subject matter of this ordinance is a non-conforming parcel by virtue of the zoning ordinance requirements of the Borough of Highlands. If sold to a contiguous property owner, this property will merge with and become a part of the lot owned by the successful bidder that is contiguous to this property. The sale of this property by the Borough shall in no way be construed as an indication that a construction permit can be secured for the property.

(l) All conveyances by the Borough shall be made by quitclaim deed.

(m) The Governing Body 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 Governing Body as set forth in Paragraph (o) hereof.

(n) The acceptable bid shall be confirmed by resolution of the Governing Body no later than the second regular meeting of the Governing Body following the date of such sale.

(o) Non-Refundable Deposit. The deposit made by the purchaser is non-refundable. The purchaser is not entitled to a refund of this deposit in any case and the risk of loss is on the purchaser.

(p) The successful bidder agrees that:

(1) He or she shall indemnify and hold the Borough harmless from any claim whatsoever arising out of the Borough's ownership interest including but not limited to environmental cleanup costs.

(2) Pay prorated real estate taxes for the balance of the current year, as of the date of closing.

(3) Abide by all appropriate zoning, subdivision, health and building regulations and codes and stipulations that this sale will not be used 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.

(4) Failure to close title as agreed shall forfeit to the Borough of Highlands any and all money deposited with the Borough.

(q) A failure by the purchaser to fully comply with the terms, conditions, requirements and regulations of sale as herein contained shall be considered, at the option of the Borough of Highlands, as a material breach of the conditions of sale whereupon the Borough may declare said contract or purchase terminated and at an end. All monies paid on behalf of the purchase price, by way of deposit or otherwise, may be retained by the Borough as its liquidated damages and it may thereafter resell said property and/or pursue such other and further legal and/or equitable remedies as it may have and the defaulting purchaser shall continue to remain liable for all damages and losses sustained by the Borough of Highlands by reason of any such default.

(r) The sale is made subject to all applicable laws and ordinances of the State of New Jersey and the Borough of Highlands.

Section 2. NOTICE. The Borough Clerk shall post and advertise copies of this ordinance as required by N.J.S.A. 40A:12-13(b)(5). A copy of this Ordinance shall also be sent by Certified Mail, R.R.R. and Regular Mail by the Borough Clerk to each contiguous property owner.

Section 3. AUTHORIZATION. The Mayor, Clerk, Borough Attorney, and such other officials as may be necessary are authorized to prepare and execute a deed and all other necessary documents to convey the Property to the successful bidder, subsequent to the Governing Body adopting a resolution awarding the bid.

Section 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

Section 5. REPEALER. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6. EFFECTIVE DATE. This Ordinance shall take effect after final passage as provided by law.

Seconded by Ms. Ryan and adopted on the following roll call vote:

ROLL CALL:

AYE: Mr. Card, Mr. Redmond, Ms. Ryan, Mrs. Wells

NAY: None

ABSTAIN: None

ABSENT: Mayor Nolan

DATE: September 22, 2015

Carolyn Cummins Borough Clerk

I hereby certify this to be a true copy of Ordinance O-15-23 adopted by the Governing Body of the Borough of Highlands on September 2, 2015.

Borough Clerk/Deputy Clerk