

**ORDINANCE 2023-5**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN LAND IN THE  
BOROUGH OF KENILWORTH TO BE SOLD AT PRIVATE SALE  
IN ACCORDANCE WITH N.J.S.A. 40A:12-13(b)(5)**

**WHEREAS**, the Council of the Borough of Kenilworth has determined that certain municipally-owned land designated as Block 101, Lot 28 on the Tax Map of the Borough of Kenilworth (hereinafter the "subject property" or the "property"), consisting of one undersized landlocked parcel of land, is no longer necessary for municipal purposes and as such shall be sold at private sale in accordance with N.J.S.A. 40A:12-13(b)(5);

**WHEREAS**, the Local Lands and Buildings Law, N.J.S.A. 40A:12-1, et seq., authorizes the sale by municipalities of any real property, capital improvement, or personal property no longer needed for public use; and

**WHEREAS**, the Borough previously adopted Ordinance No. 2022-14 seeking bids to purchase such real property pursuant to the Local Lands and Buildings Law, N.J.S.A. 40A:12-1, *et seq.* to which no bidders timely responded.

**NOW, THEREFORE, BE IT ORDAINED**, by the Council of the Borough of Kenilworth that the subject property shall be sold by private sale. The property is being sold by the Borough "as is".

**BE IT FURTHER ORDAINED**, in accordance with N.J.S.A. 40A:12-13(b)(5) and with N.J.S.A. 40A:12-13.2, the subject property is being offered to the adjacent property owners as it is an undersized lot.

**BE IT FURTHER ORDAINED**, the following terms and conditions shall apply:

**SECTION 1**

1. The subject property being sold is subject to the express condition that it shall be added to and become a part of the adjacent lands of the purchaser and it shall for all future purposes be considered as one parcel.
2. The Borough Council reserves the right to reject all bids.
3. The minimum bid the Borough will consider is \$4,000.00, plus the other costs and expenses set forth hereinbelow, and agrees that deed shall be recorded by the purchaser.
4. All bids shall be submitted as sealed bids clearly indicating on the face of the envelope it is a "Bid for Block 101, Lot 28", and shall be submitted within twenty (20) days after date of advertisement of sale required by N.J.S.A. 40A:12-13(b)(5) by no later than 10:00 a.m. on the date that is twenty (20) days thereafter.
5. Potential Bidders are advised:
  - A. To conduct all necessary title searches prior to the date that the bids are due.
  - B. That the description of the property is intended as a general guide only and may not be accurate. No representations or warranties of any kind are made by the Borough of Kenilworth as to the conditions of the property; as the premises are being sold in their present conditions "as-is," and all representations or warranties hereby are disclaimed and excluded from such sale.
  - C. That the sale is made subject to all applicable laws, statutes, rules, regulations and ordinances of the United States, the State of New Jersey and the Borough of Kenilworth.
  - D. That no employee, agent or officer of the Borough of Kenilworth has any authority to waive, modify or amend any of the conditions of the sale.
  - E. That offers for the property must be made for a sum equal to or greater than the minimum bid price of \$4,000.00.
  - F. The property will be conveyed by a Quit Claim Deed and such conveyance shall be subject to all covenants, restrictions, reservations, easements and other matters established of record or by prescription and without representation or warranty as to character of title of the property to be conveyed, and to such state of facts as an accurate survey may reveal.
6. Additional Terms the Successful Bidder must comply with:
  - A. Bidder shall deposit cash, official bank check, cashier's check or money order in the amount of not less than 10% of the bid price within 10 days of notice of acceptance of their bid,

time being of the essence. In the event the bidder fails to timely deposit 10% of the bid price, the Borough may re-auction the subject property.

B. The property purchased shall be merged with the bidder's existing property.

C. The successful bidder shall pay at the time of closing: (1) the balance of the purchase price, (2) any and all recording fees, including without limitation, the cost of recording deeds and agrees that deeds and any other documents and instruments to be recorded shall be recorded by the purchaser, (3) all legal fees attributable to the auction and sale, including but not limited to, the cost of preparation of all legal documents, (4) the advertising costs relating to each property, and (5) the realty transfer fees and any mansion taxes or fees.

D. To pay prorated real estate taxes for the balance of the current year as of the date of closing.

E. To abide by appropriate zoning, subdivision, health and building regulations and codes and stipulate that this sale will not be used as grounds to support any variance from the regulations.

F. That the failure to close title as agreed shall forfeit to the Borough of Kenilworth any and all money deposited with the Borough.

G. 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 assessments with regard to other property.

H. That the title shall close on or before **June 16, 2023**, and that date shall be considered time of the essence.

I. The Borough reserves the right to waive the requirement that two or more pieces of contiguous property be merged and treated as one piece of property.

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

K. All sales are subject to final approval by the Borough Council.

L. Parties interested in submitting bids and who require additional information, should contact Angela Lazzari, RMC, CMR, Borough Clerk, Municipal Building, 567 Boulevard, Kenilworth, New Jersey 07033.

7. The Borough does not warrant or certify title to the property and in no event shall the Borough of Kenilworth be liable for any damages to the purchaser/successful bidder if title is found unmarketable for any reason and the purchaser/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 purchaser to examine title to the premises prior to bidding but no later than the closing. In the event of closing and a later finding of defect of title, the Borough shall not be responsible for the same, shall not be required to refund money or correct any defect in title or be held liable for damages.

8. Acceptance of the bids shall constitute a binding agreement of sale, and the purchaser shall be deemed to agree to comply with the terms of conditions of the sale herein contained.

9. The sale is subject to all of the terms and conditions as provided for in the Notice of Sale.

### **SECTION 2:**

**CONSTRUCTION:** Where consistent with the context in which used in this ordinance, words importing the singular shall include the plural; words importing the plural shall include the singular; and words importing one gender shall include all other genders.

### **SECTION 3:**

**INCONSISTENCY:** Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

### **SECTION 4:**

**SEVERABILITY:** In the event that any provision of this ordinance, or the application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect and, to realize this intent, the provisions and applications of this ordinance are declared to be severable.

**SECTION 5:**

**PURPOSE OF CAPTIONS:** Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

**SECTION 6:**


**EFFECTIVE DATE:** This ordinance shall take effect immediately upon final adoption and publication and in accordance with the laws of the State of New Jersey.

**ATTEST:**

  
ANGELA LAZZARI, BMC, CMR,  
Borough Clerk

**APPROVED:**

  
LINDA KARLOVITCH,  
Mayor

Moved		INTRODUCTION				COUNCILPERSON	FINAL ADOPTION			
		Sec.	Aye	Nay	NP		Moved	Sec.	Aye	Nay
	X	X				JOSEPH FINISTRELLA		X		
		X				WILLIAM MAURO			X	
X		X				SCOTT PENTZ			X	
		X				FRED PUGLIESE			X	
		X				SAVINO SCORESE			X	
		X				JOHN ZIMMERMAN	X		X	
Introduced:		February 15, 2023				I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Kenilworth, County of Union, State of New Jersey on the aforementioned date.				
Final Adoption:		March 1, 2023				 Angela Lazzari, Borough Clerk				