

Board of Chosen Freeholders
County of Burlington
New Jersey



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MEMORANDUM

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TO: PAUL DRAYTON, COUNTY ADMINISTRATOR
FROM: PETER H. NELSON, COUNTY SOLICITOR
RE: RECENT AUCTION FOR FARM LEASES
DATE: JANUARY 28, 2014

At the last meeting of the Board of Chosen Freeholders on January 22, 2014, a question arose as to whether the recent auction of four tracts of farmland held on January 8, 2014 was held in accordance with applicable State statutes. After review, I conclude that it was, for the reasons set forth in this Memorandum.

The first question is whether or not the auction of the Crystal Lake Park parcel of approximately 375 acres, located between Route 130 and Axe Factory Road, Mansfield Township was appropriately held pursuant to N.J.S.A. 40A:12-14, a portion of the Lands and Building Law. This parcel was acquired by the County from private owners in 2007. At the time of acquisition, the tract was being farmed by a Mr. Wainwright. N.J.S.A. 40A:12-14.1 states as follows:

"Whenever a county or municipality acquires real property that, immediately prior to acquisition, was leased from the prior owner by a private person for agricultural or horticultural use, and the county or municipality determines that, until such time as the real property is needed for public use, the temporary continuance of the private agricultural or horticultural use would not compromise that public use, it may lease the real property to the prior lessee for agricultural or horticultural use for such period, consideration, and other terms and conditions as shall be mutually agreed upon."

Pursuant to this statute, Mr. Wainwright was permitted a "temporary continuance" of his lease until 2009 when the County determined that the parcel would remain substantially agricultural and horticultural, and prepared bid specifications for an auction of this and other properties. That auction was held pursuant to N.J.S.A. 48:12-14, also part of the Local Lands and Building Law. That section provides, in pertinent part:

"Any county or municipality may lease any real property, capital improvement or personal property not needed for public use as set forth in the resolution or ordinance authorizing the lease, other than county or municipal real property otherwise dedicated or restricted pursuant to law, and except as otherwise provided by law, all such leases shall be made in the manner provided by this section.

(a) In the case of a lease to a private person...said lease shall be made to the highest bidder by open public bidding at auction or by submission of sealed bids.

In 2009, Mr. Wainwright was the high bidder at the auction. He entered into a Lease with the County for a five-year period. At the conclusion of that term, the property was re-advertised for public bidding pursuant to a resolution adopted by the Board on December 11, 2013. At that auction on January 8, Mr. Wainwright was not the successful bidder.

The auction held in 2009 terminated any legal interests Mr. Wainwright might have or claim in the property pursuant to N.J.S.A. 40A:12-14.1. That statute by its terms authorized a "temporary continuance" of private agricultural use until the County determined the property would remain agricultural in nature and thus subject to public bidding under N.J.S.A. 40A:12-14. Further, our courts have held: "the purpose of competitive bidding under the Local Lands and Building Law for county or municipal leasing of property is to obtain the best economic result for the public entity and ultimately for the taxpayer. Sellitto v. Borough of Spring Lake Heights, 284 N.J. Super. 277, (A.D. 1995), certification denied 143 N.J. 324.

Also, both the 2009 lease and form of 2014 lease provide that while corn is a permitted crop, there should be no irrigation, fruit, vegetable, nursery, sod or animal production. The effect of this clause is that the crop is planted in the Spring and harvested in the Fall. There is no ongoing long-term investment into the land for products such as fruit trees where a long-term investment is required without any return for a number of years.

The second question posed is whether or not the bid specifications could be crafted to permit bidding by County residents only, to the exclusion of all others. I do not believe that this could be done. The statute on its face does not affirmatively either permit or exclude nonresident bidders. However, to fulfill the purpose of competitive bidding of obtaining "the best economic result for the public entity and ultimately for the taxpayer", as articulated by the Court in the Sellitto decision, a large as possible pool of bidders is desirable.

N.J.S.A. 40A:11-13, part of the Local Public Contracts Law, indicates with regard to the issue of bidding:

Any specification for the provision or performance of goods or services under this act shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded.

(b) Require that any bidder be a resident of, or that the bidder's place of business be located in, the county or municipality in which the contract will be awarded or performed, unless the physical proximity of the bidder is requisite to the efficient and economical performance of the contract...

The Appellate Division, in the case of Miller v. Passaic Valley Water Commission, 259 N.J. Super. 1, (A.D. 1992) certification denied 130 N.J. 601 indicated: "The Local Public Contracts Law and Local Lands and Building Law should be interpreted in pari materia (translation: in conjunction with, in the same matter), since both statutes serve the same purpose, namely, the elimination of corruption, favoritism, and extravagance. Broadly based public bidding fulfills the intention of both the Local Lands and Building Law, under which the farm lease auction was held, and the "free and open competitive bidding" standard set forth in the cited section of the Local Public Contracts Law.

I recommend the results of the auction be confirmed by resolution at the meeting of February 5, 2004.

PHN/clw