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SUPERIOR COURT OCEAN COUNTY

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(732) 842-9292  
Attorney for Plaintiff

PRESIDENTIAL ESTATES HOME  
OWNERS ASSOCIATION,  
*Plaintiff,*

v.

THE TOWNSHIP OF LAKE-  
WOOD IN THE COUNTY OF OCEAN,  
NEW JERSEY; and WIRELESS EDGE,  
*Defendants*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY

DOCKET NO.

L-4328-10

CIVIL ACTION  
IN LIEU OF PREROGATIVE WRITS

VERIFIED COMPLAINT

Plaintiff, Presidential Estates Home Owners Association, having an office address of 7 Truman Avenue, Lakewood, by way of Complaint against Defendants, says:

1. Plaintiff is the duly authorized representative of the homeowners residing in "Presidential Estates," a development of 93 homes situated on U.S. Highway 9 in Lakewood. Plaintiff is also the owner of the common elements in such development. Plaintiff brings this action in its own name, and on behalf of the residents in the development.
2. Within the last few days, residents of Presidential Estates observed the construction of a large structure in the John F. Patrick Recreation Complex, a facility

adjoining the development. The Recreation Complex is situated at Block 1059, Lot 1 (Tax Map), and is in the R-12 residential zone.

3. Upon inquiry, residents were able to ascertain that the structure was to be a tower for the transmission of cellular telephone signals.

4. Further inquiry disclosed that, on or about November 20, 2008, the Township Committee of the Township of Lakewood had purported to adopt resolution #2008-406, "Awarding a Lease to Wireless Edge for a Wireless Telecommunications Facility at the John F. Patrick Recreation Complex."

5. The resolution described a "request for proposals" procedure and authorized the execution of a lease agreement between Defendant Township and Defendant Wireless Edge.

6. The construction and installation of such tower will have a substantial adverse impact on the value of Plaintiff's real property, and the real property of the home owners in the development.

WHEREFORE, Plaintiff demands judgment:

- (A) Restraining Defendants from the construction, installation or operation of any wireless telecommunications facilities at the John F. Patrick Recreation Complex;
- (B) For damages;
- (C) For costs and fees, including attorney's fees; and
- (D) For such other and further relief as may be just and equitable.

#### SECOND COUNT

1. Plaintiff repeats the allegations of the First Count as if set forth at length at this point.

2. The Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., provides that the lease of public lands must be made to the highest public bidder, in conformance with certain procedures, N.J.S.A. 40A:12-14. Defendant Township failed to comply with

such requirements.

3. The award of the lease to Defendant Wireless Edge was arbitrary, capricious and unreasonable.

4. N.J.S.A. 40A:12-15 provides, in pertinent part, "in no event shall any lease under this section be entered into for, with, or on behalf of any commercial, business, trade, manufacturing, wholesaling, retailing, or other profit-making enterprise . . ." Defendant Township failed to comply with such restriction.

WHEREFORE, Plaintiff demands judgment:

- (A) Ordering, declaring and adjudging that Resolution #2008-406, and any lease entered into pursuant thereto, are void, invalid and of no effect;
- (B) Restraining Defendants from the construction, installation or operation of any wireless telecommunications facilities at the John F. Patrick Recreation Complex;
- (C) For costs and fees, including attorney's fees; and
- (D) For such other and further relief as may be just and equitable.

#### THIRD COUNT

1. Plaintiff repeats the allegations of the First and Second counts as if set forth at length at this point.
2. The construction and installation of wireless telecommunications towers and antennas is regulated by the Unified Development Ordinance of Defendant Township, more particularly, section 18-1012.
3. Defendant Wireless Edge failed, refused and neglected to comply with the terms and provisions of said ordinance, including, but not limited to, the requirements for Planning Board review of the factors enumerated in said ordinance, and for public notice to nearby property owners, including Plaintiff.
4. On or about March 17, 2010, the Planning Board of Defendant Township adopted a resolution which purported to grant a "favorable recommendation," following

a "courtesy review," to Defendant Wireless Edge.

5. The action by the Planning Board, including its resolution, failed to comply with the requirements of the Municipal Land Use Law.

WHEREFORE, Plaintiff demands judgment:

- (A) Ordering, declaring and adjudging that Resolution #2008-406, and any lease entered into pursuant thereto, are void, invalid and of no effect;
- (B) Ordering, declaring and adjudging that any purported approval by the Planning Board is void, invalid and of no effect;
- (C) Restraining Defendants from the construction, installation or operation of any wireless telecommunications facilities at the John F. Patrick Recreation Complex;
- (D) For costs and fees, including attorney's fees; and
- (E) For such other and further relief as may be just and equitable.

VERIFICATION

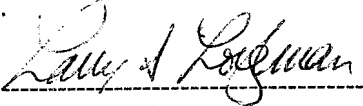
I am familiar with the facts set forth in the foregoing Complaint. The allegations contained therein are true.

-----  
Shlomo Chaitovsky  
President, Presidential Estates  
Home Owners Association

CERTIFICATION

The matter in controversy is not the subject of any other pending or contemplated action, and there are no other parties who should be joined in this action, R. 4:5-1.

The foregoing pleading includes the facsimile signature of Shlomo Chaitovsky, which he has acknowledged as genuine. A document with an original signature will be filed if requested by the Court or a party, R. 1:4-4(c).

  
-----  
LARRY S. LOIGMAN, Esq.  
Attorney for Plaintiff

November 23, 2010

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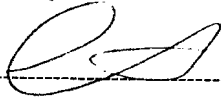
5. The action by the Planning Board, including its resolution, failed to comply with the requirements of the Municipal Land Use Law.

WHEREFORE, Plaintiff demands judgment:

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VERIFICATION

I am familiar with the facts set forth in the foregoing Complaint. The allegations contained therein are true.

  
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 President, Presidential Estates  
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 LARRY S. LOIGMAN, Esq.  
 Attorney for Plaintiff

November 23, 2010

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MEMBER N.J., N.Y. & D.C. BAR

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November 23, 2010

Hon. Vincent J. Grasso,  
Assignment Judge of Superior Court  
Ocean County Court House  
Toms River, New Jersey 08754

Re: Presidential Estates v. Lakewood

Dear Judge Grasso:

Kindly accept this letter memorandum in lieu of brief, in support of my request for the issuance of an emergent order to show cause with temporary restraints, R. 4:52-1(a). The verified complaint is being filed simultaneously.

Plaintiff, a homeowners association of some 93 condominium units, seeks immediate restraints against the construction of a cellular telephone tower adjoining its residential development. While approvals were apparently granted some time ago by the Planning Board and the Township Committee, such actions were taken without notice to Plaintiff or its members, who discovered the approvals only after construction began.

#### INJUNCTIVE RELIEF

The issuance of a temporary injunction is governed by the familiar standards found in *Crowe v. DeGioia*, 90 N.J. 126 (1982). Although *Crowe* was a matrimonial case, its discussion has general applicability. The first factor to be considered is the nature of the harm:

Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. In certain circumstances, severe personal inconvenience can constitute irreparable injury justifying issuance of injunctive relief. Pecuniary damages may be inadequate because of the nature of the injury or of the right affected.

*Id.*, at 132-133 (citations omitted; emphasis supplied). The other criteria are: settled legal right to the relief sought; a reasonable probability of success on the merits; and the relative hardship to the parties in granting or denying relief.

An alternate formulation was adopted in *Sheppard v. Twp. of Frankford*, 261 N.J.Super. 5 (App.Div., 1992):

To serve as guidelines for resolution of an application for injunctive relief, the Restatement (Second) of Torts has identified a comprehensive, though not exclusive, list of relevant factors. Those factors are (1) the character of the interest to be protected; (2) the relative adequacy of the injunction to the plaintiff as compared with other remedies; (3) the unreasonable delay in bringing suit; (4) any related misconduct by plaintiff; (5) the comparison of hardship to plaintiff if relief is denied, and hardship to defendant if relief is granted; (6) the interests of others, including the public; and (7) the practicality of framing the order or judgment. Restatement (Second) of Torts §936 (1977). To the extent the factors are present, the judicial process is to weigh and balance each factor in a qualitative rather than quantitative manner.

*Id.*, at 10. Plaintiff and its members will be seriously harmed if construction is allowed to proceed. Their real property will be devalued, and other harm may result, the nature of which is unknown at this point because investigation into the facility has only now begun.

#### PUBLIC BIDDING

The Local Lands and Buildings Law requires public bidding before a lease of public property is awarded, N.J.S.A. 40A:12-14. It contemplates bidding in the manner specified by the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., which strictly regulates the manner in which competitive bids are to be accepted by local government units for all products and services. “The statutory rule in New Jersey is that publicly advertised contracts must be awarded to ‘the lowest responsible bidder.’ N.J.S.A. 40A:11-6.1. . . This Court has interpreted that requirement to mean that the contract must be awarded not simply to the lowest bidder, but rather to the lowest bidder that complies with the substantive and procedural requirements in the bid advertisements and specifications.” *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 313 (1994). Since an amendment in 1999, N.J.S.A. 40A:11-4(a) now provides, “Every contract awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded

only by resolution of the governing body of the contracting unit to the lowest responsible bidder after public advertising for bids and bidding therefor . . .”

The general objectives of the public bidding statutes are familiar, having been reiterated in many reported decisions:

We begin our analysis by noting that “[a] major objective of all public bidding statutes has been to promote the honesty and integrity of those bidding and of the system itself.” *Keyes Martin & Co. v. Director, Div. of Purchase*, 99 N.J. 244, 256 (1985).

Bidding statutes are for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good. Their objects are to guard against favoritism, improvidence, extravagance and corruption; their aim is to secure for the public the benefits of unfettered competition. To achieve these purposes all bidding practices which are capable of being used to further corrupt ends or which are likely to affect adversely the bidding process are prohibited, and all awards made or contracts entered into where any such practice may have played a part, will be set aside. This is so even though it is evident that in fact there was no corruption or any actual adverse effect upon the bidding process.

[*Terminal Constr. Corp. v. Atlantic County Sewerage Auth.* 67 N.J. 403, 409-10 (1975).]

It is, of course, essential to any system of honest public bidding that all bidders compete on the same terms.

The conditions and specifications must apply equally to all prospective bidders. Otherwise, there is no common standard of competition. Every element which enters into the competitive scheme should be required equally for all and should not be left to the volition of the individual aspirant to follow or to disregard and thus to estimate his bid on a basis different from that afforded the other contenders. So it follows that all bids must comply with the terms imposed, and any material departure therefrom invalidates a non-conforming bid as well as any contract based upon it. If this were not the rule, the mandate for equality among bidders



would be illusory and the advantages of competition would be lost.

[*Hillside Township v. Stermin*, 25 N.J. 317, 322-23 (1957).]

Our courts have long recognized the necessity for careful scrutiny in reviewing challenges to bidding procedures. “In this field it is better to leave the door tightly closed than to permit it to be ajar, thus necessitating forevermore in such cases speculation as to whether or not it was purposely left that way.” *Id.* at 326.

*Sevell's Auto Body v. New Jersey Highway Auth.*, 306 N.J. Super. 357, 363-364 (App.Div., 1997; certif. den., 153 N.J. 51, 1998).

#### LAKWOOD'S ORDINANCE

Lakewood's Unified Development Ordinance comprehensively regulates the siting of cellular telephone towers. An exception is made for towers “located on property owned, leased or otherwise controlled by the Township of Lakewood . . . [which] shall be deemed to be permitted as a municipal facility in any zone district.” However, that exception should be construed as permitting municipally-owned and operated towers, not those erected and operated by private concerns for profit.

The purpose of the regulation is set forth in Section 18-1012(A), which explains, in pertinent part, that they are designed to:

(1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in appropriate locations; (3) minimize the total number of towers throughout the Township; (4) strongly encourage the joint use of approved tower facilities . . . ; (5) encourage uses of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; . . . (9) avoid potential damage to adjacent properties from tower failure through engineering and care [in?] siting of tower structures. In furtherance of these goals, Lakewood Township shall give due consideration to the Township master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

Numerous design standards are included in the ordinance, to minimize impact on residential properties as much as possible. For example, towers must be “a minimum

radial separation distance of one thousand five hundred (1,500) feet from residential dwelling units or lands zoned for residential use," §18-1012(D)(1)(s)(1)(b). The subject tower, located in an active recreation area, is only a few hundred feet from Plaintiff's development and many other residences.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the order to show cause be entered with temporary restraints.

Respectfully,

LARRY S. LOIGMAN

cc: Bathgate, Wegener & Wolf, Esqs.  
Wireless Edge