

Bellmawr Redevelopment Authority

RESOLUTION: # 03:010-18

A RESOLUTION OF THE BELLMAWR REDEVELOPMENT AUTHORITY PROVIDING FOR A DEFENSE AND INDEMNIFICATION OF OFFICIALS, EMPLOYEES AND SERVANTS

WHEREAS, the Bellmawr Redevelopment Authority (hereinafter Authority) has considered whether and to what extent a defense and indemnification of Authority officials, employees and servants for actions in the good faith performance of their duties is consistent with law, appropriate and fair given the volunteer status of authority members and promotes efficiency in Authority operations by eliminating conflicts between the Authority and employees and reduces defense costs in the event of litigation; and

WHEREAS, the Authority makes the following findings:

A. The State of New Jersey, through the passage of the Tort Claims Act, as amended and supplemented, from time to time (N.J.S.A. 59:1-1 et seq.) has determined the circumstances under which claims may be against public entities and their officials, employees and servants.

B. Said Tort Claims Act also specifies under what circumstances a public entity may defend and indemnify its officials, employees and servants.

C. The Authority hereby provides, under certain circumstances, for the defense and indemnification of its officers, employees and servants in the good faith performance of their duties and responsibilities.

D. Such defense and indemnification are especially appropriate for members of appointed boards who serve the Authority without monetary compensation.

E. The indemnification of municipal employees is also expressly designed to avoid a conflict between the employer and the employee when claims are lodged. The Supreme Court for the State of New Jersey has noted that because the law does not require, but does permit, indemnification of local public entity employees, conflicts of interest may arise in the absence of such indemnification where an entity and an employee are both sued for compensatory damages in, for example, a civil rights action and both employ the same attorney to defend. Likewise, the Court pointed out such conflict could arise because the employee is liable for punitive damages and the entity is not. (See Petition for Review of Opinion 552, 102 N.J. 194). Finally, this indemnification policy is also intended to increase the efficiency and reduce the costs of defending the Authority and its employees and agents in the event of such actions.

NOW, THEREFORE, be it resolved as follows:

§1 DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

PUBLIC EMPLOYEE

Shall include any employee of the Authority and shall include any elected or appointed official, counsel or special counsel, or any officer, employee or servant, whether or not compensated, who is authorized to perform any act or employment, provided the events giving rise to a cause of action or claim hereunder conform to the requirements herein established.

DEFENSE

The means by which such public employee may respond to any suit, allegation or cause of action. The Authority shall upon request provide the defense of any action, suit or proceeding, whether civil, criminal, administrative or investigative, including a cross action, counterclaim or cross complaint against any public employee because of any good faith act or omission of that employee in the scope of his or her employment and shall defray all reasonable costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, excepting actions, suits or proceedings brought by the Authority against any such employee. Expressly exempted from this chapter providing defense and indemnification to public employees of the Authority are any charges, allegations or actions of whatever nature asserted by the Authority against its own employees.

INDEMNIFICATION

To secure against loss or damage which may occur in the future or to provide compensation for or to repair loss or damage already suffered; to insure; to save harmless.

§2 PROVISIONS OF INDEMNIFICATION.

A. Whenever a civil action shall be brought against any person holding an office, position or employment with the Authority for any good faith action or omission arising out of or in the course of the performance of the duties of such office, position or employment, the Authority shall provide payment of that portion of any exemplary or punitive damage award not otherwise covered by a policy of insurance. Note, however, that the Authority does not, by indemnifying its employees against punitive damages, indirectly or directly waive its own immunity against such claims. (See *T&M Homes, Inc. v. Pemberton Twp*, 190 N.J. Super. 637.)

B. Whenever a civil action shall be brought against any person holding an office, position or employment with the Authority for any action or omission arising out of or in the course of the performance of the duties of such office, position or employment, the Authority shall provide payment of that portion of reasonable costs of defense of said action not covered by a policy of insurance. Whenever any insurance policy whose purpose is to provide the defense and indemnification of the Authority or its public employees is in dispute, the Authority will stand in the place of the insurance carrier, subject to all rights of subrogation, and provide for the defense and indemnification of its employees as specified herein. Said public employee has an affirmative duty, to be eligible for said defense and indemnification, to fully cooperate with the Authority in any and all of its efforts to resolve any disputed insurance coverage.

§3 LIMIT OF OBLIGATION.

By common law and the express provisions of this chapter, the Authority's authority to indemnify is limited to acts by public employees that are within the scope of their employment and which is not criminal, fraudulent, malicious or instances of willful misconduct. Additionally, the Authority will not provide the means for a defense nor indemnify any public employee in those instances where the Authority has initiated

the charges or action. In the event that any such public employee is charged with criminal charges and he or she is later acquitted, any application to recover the cost of his or her defense is expressly conditioned upon the ultimate determination of administrative charges which may or may not arise out of the same conduct or behavior. Notwithstanding all of the above, in the event that the Authority elects to assert such administrative charges and even if the employee should hereafter prevail, all such claims for reimbursement for costs of defense will be subjected to the controlling statutory and common law as opposed to this chapter.

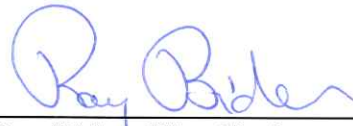
Dated: March 14, 2018

APPROVED:



Frank R. Filipek, Chairman

It is certified, hereby, that this is a true copy of the Resolution adopted by the Bellmawr Redevelopment Authority on the 14th day of March, 2018.



Ray Bider, Vice Chairman, Acting Secretary