

INDEPENDENCE TOWNSHIP COMMITTEE
Meeting held at the Municipal Building, Great Meadows, NJ.
January 12, 2016 7:00 p.m.

This is a regular meeting of the Township Committee of Independence Township, Warren County, New Jersey. This meeting was called to order by Mayor Robert Giordano at 7:01 p.m. with the following announcement: "Adequate notice of this meeting was given in accordance with the Open Public Meetings Act by providing a schedule of regular meetings to the Star Gazette and The Express Times, posting a copy thereof on the Township bulletin board and filing a copy thereof in the office of the Municipal Clerk." The Pledge of Allegiance to the American Flag was led by Mayor Giordano.

ROLL CALL:

Present: Mayor Robert Giordano, Deputy Mayor Williams – 7:05 pm), Bonnie Kelsey 7:06 pm), Glenn Cogle, Carmen Feula, and Debi Hrebenak. Also present were Attorney Leslie Parikh and Engineer Michael Finelli.

Absent: None recorded

INTRODUCE ON FIRST READING

2016-02 *IMUA Indemnification Ordinance*

§18-1

Statutory Authority

Pursuant to law, including N.J.S.A. 59:10-1 et seq., indemnification is provided for defense costs and payment of a judgment rendered against a municipal/state employee for actions or failures to act while in the scope of his or her employment. Pursuant to law, including N.J.S.A. 59:10-4, local public entities are empowered to indemnify local public employees and officials consistent with the provisions of the New Jersey Tort Claims Act. The Township of Independence deems it in the best interest of the Township to indemnify its officials, officers and employees consistent with the New Jersey Tort Claims Act.

It is the intent and purpose of the Chapter to provide for the defense of actions against and the indemnification of public officials, officers and employees for civil actions as permitted by law and as permitted by the Chapter. This Chapter should be liberally construed to provide the fullest defense and indemnification allowed by law.

§ 18-2

Definitions.

For the purpose of this chapter, unless the context clearly indicates a different meaning, the following words and phrases shall have the meanings set forth:

INSURANCE

Coverage afforded by insurance policies of every kind, whether the premiums are paid by the Township, the municipal official or someone on his or her behalf, including, without limitation, coverage provided by and through any policy of insurance, insurance fund or joint insurance fund and/or any excess liability policies.

MUNICIPAL OFFICIAL, OFFICER OR EMPLOYEE

Any person, presently or in the future, elected or appointed to any public office, board, commission or authority of the Township of Independence, whether full- or part-time, whether or not compensated for the appointed or elected position. It shall not include officials, officers and employees who are appointed, elected or employed by the Great Meadows Regional Board of Education. It shall include all other boards, commissions and authorities, and individual members thereof, which are subdivisions of municipal government. It shall also mean any person employed or retained by the Township for any office, commission, board or authority thereof, whether or not said person serves in a

paid or unpaid capacity; provided, however, that these terms do not include independent contractors employed by the Township.

§ 18-3

Indemnification.

Subject to the provisions of this chapter, whenever an official, officer, or employee of the Township is named as a defendant in any civil action or civil legal proceeding arising out of or incidental to the performance of the duties of the position or the office held by such municipal officials, the Township shall provide the official, officer, or employee with the necessary and reasonable defense and shall hold each official, officer or employee harmless and indemnify him or her from the payment of any settlement and/or all monetary judgments imposed upon him or her. The Township shall indemnify officials, officers or employees from all civil suits, including defense costs, if and only if, the person establishes that the act or omission upon which the claim or judgment was based occurred within the scope of his or her employment or appointment as an official, officer or employee of the Township and the person establishes that he or she did not act or failed to act because of actual fraud, actual malice or willful conduct. The Township may indemnify a municipal official for exemplary or punitive damages resulting from the municipal official's civil violation of state or federal law if, in the opinion of the Township Committee, the acts committed by the municipal official upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

§ 18-4

Exceptions to reimbursement.

The Township shall not be obligated to provide reimbursement in the following instances:

A.

Where the legal proceeding is instigated or brought by the municipal official.

B.

Where the legal proceeding involves a claim of misfeasance or malfeasance in office or a claim of fraud, theft or misappropriation of public funds and the municipal official is found liable for the charge.

C.

Where the legal proceeding is instigated or brought by the municipality itself or any board, commission or authority established as a subdivision of municipal government against said municipal official, officer or employee and the municipality, board, commission or authority is determined to be the prevailing party by a court of competent jurisdiction.

D.

Where the legal proceeding involves a question concerning the election laws.

E.

Where it is not deemed appropriate by the Township pursuant to law, including NJSA 59:10-1 et. seq.

F.

Where the public official, officer or employee has failed to cooperate fully with the defense provided by the municipality.

G.

Where the act or failure to act alleged was clearly because of actual fraud, willful misconduct or actual malice.

H.

Where there exists policies of insurance, whether obtained by the Township or by any other, by virtue of which the official, officer or employee is entitled to a defense of the action in question from any insurer, including coverage pursuant to that referenced herein, and the insuring entity is actually providing a defense and there exists coverage for damages, awards judgments or settlements. Notwithstanding anything in this Section 18-4(H) to the contrary, in the event that any defense costs (including attorney fees and costs), awards, judgments, settlements or other resolution of the matter exceeds the available coverage, the Township agrees that it shall be responsible for any amounts in that regard.

I.

Where the official, officer or employee fails to notify the Township in a prompt manner and as soon as possible as to any action threatened against him or her.

J.

Where the lawsuit or claims assert a right for punitive damages.

§ 18-5

Procedure for claims; method of providing defense; failure to cooperate.

A.

The Township may provide any defense required of it pursuant to the within chapter through an attorney from its own staff or by employing other counsel selected by the Township. It shall be the Township's sole option to select counsel and wherever permissible by law and/or canons of professional ethics controlling attorneys' practice of law, the Township may assume exclusive control of the representation of said official, officer or employee.

B.

A municipal official, officer or employee shall not be entitled to indemnification or reimbursement pursuant to this chapter unless within 15 calendar days of the time he or she is personally served with a summons, complaint, process notice, demand or other pleading he or she delivered the original or a copy thereof to the Township Clerk with a request to defend and indemnify. As determined by the Clerk/Administrator, the foregoing can be overcome upon a showing of exceptional circumstances resulting in the inability of the municipal official, officer or employee to provide said notice to the Township Clerk, the municipal official, officer or employee shall be obligated to cooperate to the fullest extent possible with the Township in the conduct of the defense. Wherever competent and disinterested legal counsel is available to the Township through any insurance coverage, the municipal official, officer or employee shall be obligated to be represented by such counsel. If the Township wishes to use the Township Attorneys or the attorney for any board or committee of the Township to defend the claim, the municipal official, officer or employee shall be obligated to be represented by that attorney unless there is a conflict of interest. The refusal of the municipal official, officer or employee to cooperate with the Township shall terminate the Township's obligation to provide a defense and/or indemnify or to otherwise reimburse any municipal official, officer or employee.

§ 18-6

Approval of settlements.

If the legal proceeding is terminated by an agreement among the parties, then the Township shall not be obligated to reimburse the municipal official, officer or employee unless the Township, by and through the governing body and/or by court order, approves the settlement agreement. Approval of any settlement agreement shall not be unreasonably withheld, conditioned or delayed.

§ 18-7

Counsel fees and costs of litigation.

Counsel fees to be paid to outside counsel, other than the Township Municipal Attorney or the attorney for any board or commission, for services rendered in connection with a

claim subject to this chapter, shall be reasonable and shall be established by the governing body through resolution prior to the retention of such counsel. For any fees owed which are not covered by the insuring entity, the Township may pay said fees when billed, or reimburse the municipal official, officer or employee for all or any portion of any expense(s) incurred prior to the final decision in the legal proceeding at the Township's sole discretion. The Township shall be entitled to wait for a final determination before making a determination to reimburse defense costs and/or honor indemnity.

§ 18-8

Costs attributable to counteraction.

If the municipal official files a counteraction in the legal proceedings, the municipality shall not be obligated to reimburse him for any attorney fees or court costs attributable to such counteraction.

§ 18-9

Precedence of statute applying to police.

To the extent N.J.S.A. 40A:14-155 provides broader indemnification to members of the municipality Police Department, that statute shall supersede this chapter.

§ 18-10

When effective; actions prior to ordinance.

A.

This chapter shall take effect upon final passage and publication according to law.

B.

Any legal action which may be covered by this chapter which has not been reduced to final judgment as of the date of passage shall be covered by the tents of the chapter.

Take notice, the foregoing Ordinance was introduced and passed on first reading by the Independence Township Committee at the regular monthly meeting on January 12, 2016 which Ordinance shall be given further consideration for final passage following a public hearing to be conducted thereon at its regular monthly meeting to be held on

February 9, 2016 at The Independence Township Administrative Offices, 286-B Route 46, Great Meadows, New Jersey 07838.

Attorney Parikh stated that there are exemptions noted in the ordinance and a person has to be designated, who should be outside of the Township family so they are unbiased, to make certain determinations. A motion was made by Mr. Cogle to adopt Ordinance 2016-02 for First Reading. Mr. Feula seconded the motion with roll call as follows:

Ayes: Mr. Cogle, Mr. Feula, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded. Mrs. Kelsey was not yet present.

Motion carries with four (4) affirmative votes.

Second reading and public hearing will be on February 9, 2016

MINUTES: A motion was made by Mr. Feula to accept the Minutes of the January 5, 2016 Reorganization meeting as written. Mr. Cogle seconded the motion with roll call as follows:

Ayes: Mr. Cogle, Mr. Feula, Mrs. Kelsey, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

CONSENT AGENDA:

Resolution 16-19: Raffle Tricky Tray Domestic Abuse & Sex Assault Crisis

WHEREAS, Domestic Abuse & Sex Assault Crisis is registered by the State of New Jersey to operate legalized games of chance, (31-4-29993) and,

WHEREAS, they have submitted an application for a Raffle to be held on February 19, 2016, and all fees have been paid,

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Independence, that RA# 418 is issued to Domestic Abuse & Sex Assault Crisis Center.

Resolution 16-20: Raffle 50/50 Domestic Abuse & Sex Assault Crisis

WHEREAS, Domestic Abuse & Sex Assault Crisis is registered by the State of New Jersey to operate legalized games of chance, (31-4-29993) and,

WHEREAS, they have submitted an application for a 50/50 Raffle to be held on February 19, 2016, and all fees have been paid,

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Independence, that RA# 419 is issued to Domestic Abuse & Sex Assault Crisis Center.

Resolution 16-21: Lienholder Refund Block 4 Lot 15

WHEREAS, The Tax Collector recommends to the Township Committee that the necessary administrative action be taken to authorize a refund to the following lienholder.

NOW, THEREFORE BE IT RESOLVED by the Independence Township Committee, that the following refunds be made:

Block	Lot	Lien #	Name/Address	Amount	Interest	Lien	
						Premium	Total Refund
4	15	2015-01	TWR Cust Ebury Fund INJ 5 Cold Hill Rd S Suite 11 Mendham, NJ 07945	\$ 4,295.92	\$ 110.57	\$ -0-	\$ 4,406.49
Total amount to be refunded							\$ 4,406.09

Resolution 16-22: Raffle 50/50 Soroptimist International of Hackettstown

WHEREAS, Soroptimist International of Hackettstown is registered by the State of New Jersey to operate legalized games of chance, (181-8-20806) and,

WHEREAS, they have submitted an application for a Raffle to be held on April 23, 2016, and all fees have been paid,

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Independence, that RA# 420 is issued to Soroptimist International of Hackettstown.

Resolution 16-23: Raffle Tricky Tray Soroptimist International of Hackettstown

WHEREAS, Soroptimist International of Hackettstown is registered by the State of New Jersey to operate legalized games of chance, (181-8-20806) and,

WHEREAS, they have submitted an application for a Raffle to be held on April 23, 2016, and all fees have been paid,

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Independence, that RA# 421 is issued to Soroptimist International of Hackettstown.

Resolution 16-24: Resolution Authorizing the Mayor and Clerk to Execute a Redeveloper's Agreement with Woodmont Independence Urban Renewal, LLC.

Resolution 16-24 – Action will be held until after the executive session this evening.

Mr. Cogle made a motion to approve Resolutions 16-19 through and including 16-23 as written. Mr. Feula seconded the motion with roll call as follows:

Ayes: Mr. Cogle, Mr. Feula, Mrs. Kelsey, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

DEPARTMENT REPORTS:

Tax Collector - Posted

Construction/Zoning – Reports were submitted.

Environmental – No report.

Treasurer – Budget meeting on January 30th.

Recreation/Green Acres – John Cummins gave a report. There will be joint baseball/basketball registration this Saturday. Flyers went out to all the residents. The budget to operate everything is approximately \$14,000. Mayor Giordano appointed Anthony Wood, with the consent of the Township Committee, to the Recreation Committee to take the place of John Cummins. Mr. Williams discussed the status of the agreement of the residents using the gym from Monday through Saturday. Discussion resulted in Mr. Williams making a motion to propose an amendment (second paragraph) to the Joint Services Agreement expanding the usage time (Monday through Saturday instead of Monday - Friday) in accordance with the discussion held with the Superintendent along with seeking the Board of Education's approval. Mr. Cogle seconded the motion with roll call as follows;

Ayes: Mr. Cogle, Mr. Feula, Mrs. Kelsey, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

Police – Report has been submitted

Emergency Services – Representatives will be coming to the budget meeting on Saturday.

DPW – Report was submitted.

Municipal Clerk: Dog licenses are being issued.

Land Use Board – Mr. Feula stated that the Board is quiet.

Seniors – No report.

Board of Education – Mr. Williams has nothing further.

BID ACCEPTED: Block 10 Lot 22.02 - Attorney Parikh stated that a Title Search will be done and closing will be completed within a month. The lot line adjustment can be done internally. Harry Noble was present and stated that he will pay for the Title search. Contracts will be forwarded to Mr. Noble within the next week.

PROFESSIONAL REPORTS:

Attorney Parikh: Has items for executive session.

Engineer Finelli: Most of the items are repeat items. Update on Russling Road – sent out a payment request last week for the final payment to the contractor. Mayor Giordano stated that the payment was completed today. Mr. Williams discussed the Transportation Trust Fund proposed gas tax increase.

Grant applications that were made months ago, Finelli noted that the Township's budget will potentially be in place before we are notified as to if we are awarded any of these grants. Asphalt Price Adjustment can be utilized if the oil prices fall. Wastewater Management Plan – we are exactly at the same spot as we were in November. We submitted revisions months ago and we have not been given any answers. Mr. Feula noted his concerns with this as the Township Committee has to take action without having this information. The deadline for the regulations is January 16th. What does it mean for the Township if there is no Wastewater Management Plan in place as far as the upcoming projects are concerned? Attorney Parikh stated that the attorney for the Woodmont project is fully aware of the situation. Engineer Finelli stated that there are other townships that do not have a wastewater management plan in place.

Mayor Giordano stated that the Township has won summary judgement in the Kasharian case. Attorney Parikh expects an appeal to be filed.

OLD BUSINESS: None

NEW BUSINESS: Appointment of Anthony Wood was done earlier.

PUBLIC COMMENT: Dan Stroessenreuther stated that the Booster Club By-Laws are being worked on.

BILLS: A motion was made by Mr. Feula to pay the bills as presented. Mayor Giordano seconded the motion with roll call as follows:

Ayes: Mr. Feula, Mrs. Kelsey, Mr. Cogle, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

EXECUTIVE SESSION: 7:45 pm – 8:55 pm

WHEREAS: N.J.S. 2:4-12, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist:

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Independence, County of Warren, State of New Jersey, as follows:

the public shall be excluded from discussion of the hereinafter specified subject matters;

The general nature of the subject matter to be discussed is as follows:

Legal issues

It is anticipated at this time that the above matter will be made public upon completion of the matter discussed.

This Resolution shall take effect immediately.

A motion was made by Mr. Williams to approve this Resolution at 7:45 p.m., seconded by Mr. Cogle and followed by a roll call of all ayes.

A motion was made by Mr. Cogle at 8:55 p.m. to exit the executive session, seconded by Mrs. Kelsey followed by a roll call of all ayes.

Roll Call: All five (5) members are present.

Mayor Giordano stated that the Committee is ready to adopt Resolution 16-24 listed under the Consent Agenda:

RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO EXECUTE A

**REDEVELOPER'S AGREEMENT WITH
WOODMONT INDEPENDENCE URBAN RENEWAL, LLC**

WHEREAS, the Independence Township Committee (the "Township Committee"), in its capacity as the redevelopment agency for the Township of Independence (the "Township"), is responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (hereinafter referred to as the "Redevelopment Law"); and

WHEREAS, Woodmont Independence Urban Renewal, LLC (the "Redeveloper") is the owner of Block 6.02, Lot 3, consisting of approximately 12.28 acres (the "Property"), which property has failed to be developed despite a prior approval for residential development with an affordable housing component; and

WHEREAS, pursuant to Resolution 13-39 adopted on April 8, 2013, the Township Committee authorized an investigation to determine if the Property was in need of redevelopment; and

WHEREAS, the Planning Board, by way of Resolution 2013-01, determined that the Property is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A: 12A-5; and

WHEREAS, based upon an investigation and recommendations of the Township Land Use Board, the Township Committee determined that the Property is in an area in need of redevelopment pursuant to the Redevelopment Law and adopted Resolution #13-53 on July 9, 2013; and

WHEREAS, on October 9, 2014, pursuant to Ordinance 2014-05, the Township Committee adopted the Redevelopment Plan ("the Redevelopment Plan") for the Property; and

WHEREAS, Redeveloper submitted a Concept Plan to the Township Committee for the redevelopment of the Property as a residential housing complex with an affordable housing component; and

WHEREAS, the Redevelopment Law authorizes the Township to arrange or contract with a redeveloper for the planning, construction, or undertaking or any project or redevelopment work in a redevelopment area; and

WHEREAS, on October 9, 2014, the Township determined that the Concept Plan is consistent with and meets the goals of the Redevelopment Plan and is in the best interest of the community and, therefore, adopted Resolution 2014-05 designating the Redeveloper as redeveloper for the Property; and

WHEREAS, the Township believes that the redevelopment of the Property in the manner proposed by the Redeveloper is in the vital and best interests of the community and promotes the health, safety, morals and welfare of the Township's residents and is in accord with the public purpose and provisions of the Redevelopment Law; and

WHEREAS, the Township has engaged in negotiations with the Redeveloper and has determined that it is in the best interest of the community for the Township to enter into a certain Redeveloper's Agreement with the Redeveloper, a copy of which is attached hereto as Exhibit A, for the purposes of specifying each parties' respective rights

and obligations for the effectuation of the goals and objectives of redevelopment of the Property.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Committee of the Township of Independence, County of Warren, New Jersey, that the Mayor and Clerk are hereby authorized to execute the Redeveloper's Agreement between the Township of Independence and Woodmont Independence Urban Renewal, LLC, in substantially the form attached hereto, subject to the final review of Township of Independence's Engineer, Planner, and Attorney.

A motion was made by Mr. Williams to adopt Resolution 16-24 as written. Mrs. Kelsey seconded the motion with roll call as follows:

Ayes: Mr. Cogle, Mr. Feula, Mrs. Kelsey, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

No further action will be taken tonight with items discussed in executive session.

ADJOURNMENT: A motion was made by Mr. Williams to adjourn the meeting at 9:00 p.m. Mr. Cogle seconded the motion with roll call as follows:

Ayes: Mr. Cogle, Mr. Feula, Mrs. Kelsey, Mr. Williams, and Mayor Giordano

Nays: None recorded

Abstain: None recorded

Motion carries with five (5) affirmative votes.

Respectfully submitted,

Deborah M. Hrebenak, RMC/CMR
Municipal Clerk