

**STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE  
Room 1058, IGCN – 100 North Senate  
Indianapolis, IN 46204**

**IN THE MATTER OF THE REQUEST )  
OF TIPPECANOE TOWNSHIP AND )  
THE TOWN OF BATTLE GROUND, )  
TIPPECANOE COUNTY, FOR THE )  
ESTABLISHMENT OF AN INITIAL ) IML21-006  
MAXIMUM LEVY FOR THE )  
TIPPECANOE TOWNSHIP FIRE )  
PROTECTION TERRITORY )**

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**FINAL DETERMINATION**

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The Department of Local Government Finance (“Department”) has reviewed the request of Tippecanoe Township (“Township”) and the Town of Battle Ground (“Town”), both in Tippecanoe County and hereafter referred to as “Units”, for an initial operating maximum levy for the Tippecanoe Township Fire Protection Territory (“Territory”). Having considered the issues, the Department now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. Indiana Code 36-8-19-5 allows the legislative bodies of at least two contiguous units to establish a fire protection territory for any of the following purposes:
  - (A) Fire protection, including the capability for extinguishing all fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the territory.
  - (B) Fire prevention, including identification and elimination of all potential and actual sources of fire hazard.
  - (C) Other purposes or functions related to fire protection and fire prevention.
  
2. Per IC 36-8-19-6, to establish a fire protection territory, the legislative bodies of each unit desiring to become a part of the proposed territory must:
  - i. Adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township) that meets the following requirements:
    - (A) The ordinance or resolution is identical to the ordinances and resolutions adopted by the other units desiring to become a part of the proposed territory.
    - (B) The ordinance or resolution is adopted after January 1 but before April 1.

- (C) The ordinance or resolution authorizes the unit to become a party to an agreement for the establishment of a fire protection territory.
  - (D) The ordinance or resolution is adopted after the legislative body holds a public hearing to receive public comment on the proposed ordinance or resolution. The legislative body must give notice of the hearing under IC 5-3-1.
  - (E) The ordinance or resolution includes at least the following:
    - (1) The boundaries of the proposed territory.
    - (2) The identity of the provider unit and all other participating units desiring to be included within the territory.
    - (3) An agreement to impose:
      - (A) a uniform tax rate upon all of the taxable property within the territory for fire protection services; or
      - (B) different tax rates for fire protection services for the units desiring to be included within the territory, so long as a tax rate applies uniformly to all of a unit's taxable property within the territory.
    - (4) The contents of the agreement to establish the territory.
- ii. Hold a public hearing, at least 30 days before adopting the ordinance or resolution, at which the legislative body makes available to the public the following information:
- (A) The property tax levy, property tax rate, and budget to be imposed or adopted during the first year of the proposed territory for each of the units that would participate in the proposed territory.
  - (B) The estimated effect of the proposed reorganization in the following years on taxpayers in each of the units that would participate in the proposed territory, including the expected property tax rates, property tax levies, expenditure levels, service levels, and annual debt service payments.
  - (C) The estimated effect of the proposed reorganization on other units in the county in the following years and on local option income taxes, excise taxes, and property tax circuit breaker credits.
  - (D) A description of the planned services and staffing levels to be provided in the proposed territory.
  - (E) A description of any capital improvements to be provided in the proposed territory.
- iii. Hold at least one additional public hearing before adopting an ordinance or a resolution to form a territory, to receive public comment on the proposed ordinance or resolution. The notice required for this hearing must include all of the following:
- (A) A list of the provider unit and all participating units in the proposed territory.
  - (B) The date, time, and location of the hearing.
  - (C) The location where the public can inspect the proposed ordinance or resolution.
  - (D) A statement as to whether the proposed ordinance or resolution requires uniform tax rates or different tax rates within the territory.
  - (E) The name and telephone number of a representative of the unit who may be contacted for further information.
  - (F) The proposed levies and tax rates for each participating unit.

3. According to IC 36-8-19-8, upon the adoption of identical ordinances or resolutions, or both, by the participating units, the designated provider unit must establish a fire protection territory fund from which all expenses of operating and maintaining the fire protection services within the territory, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, and all other expenses lawfully incurred within the territory shall be paid. The purposes described in this subsection are the sole purposes of the fund, and money in the fund may not be used for any other expenses. The provider unit, with the assistance of each of the other participating units, must annually budget the necessary money to meet the expenses of operation and maintenance of the fire protection services within the territory. The provider unit may maintain a reasonable balance, not to exceed 120% of the budgeted expenses. Except as provided in IC 6-1.1-18.5-10.5, after estimating expenses and receipts of money, the provider unit must establish the tax levy required to fund the estimated budget. The amount budgeted must be considered a part of each of the participating unit's budget.

4. Pursuant to IC 36-8-19-8.5, participating units may agree to establish an equipment replacement fund to be used to purchase fire protection equipment, including housing, that will be used to serve the entire territory.

5. The Department, when approving a rate and levy fixed by the provider unit under IC 36-8-19-9, must verify that a duplication of tax levies does not exist within participating units, so that taxpayers do not bear two levies for the same service.

### **RELEVANT PROCEDURAL HISTORY**

6. On March 31, 2021, the Units submitted to the Department a petition "to create the Tippecanoe Township Fire Protection Territory." *Record, Cover Letter*. The petition included the following documents:

- A narrative explaining the background and the Territory's formation.
- A powerpoint presentation for the public hearings.
- The Town of Battle Ground's adopting ordinance #2021-594.
- Tippecanoe Township's adopting resolution.

All of the documents referenced above are included in the Record.

7. According to the Record, since 2009 Tippecanoe Township has served as the provider unit for the North East Tippecanoe Fire Territory ("NETFT"), which had the Town, Washington Township, Perry Township, and Sheffield Township as participating units. As the City of Lafayette annexed into Perry and Sheffield Townships, the balance of the CNAV in NETFT shifted toward Tippecanoe Township, and the Town has also continued to grow. *Record, p. 1*. As a result, the Township would purportedly have a greater tax burden compared to other participating units of NETFT. On February 2 & 15, 2021, respectively, the Township and Town voted to withdraw from NETFT. Subsequently, both Units began the process of forming a new territory. *Record, p. 2*.

8. On March 29, 2021, the Town adopted an ordinance and the Township adopted a resolution following a public hearing on March 26, 2021, which was advertised on February 9 & March 11, 2021, in the *Lafayette Journal & Courier*, and on February 11 & March 18, 2021, in the

*Lafayette Leader. Record pp. 17-27; Lafayette Journal & Courier Publisher’s Claims, Lafayette Leader Publisher’s Claims.* The resolution & ordinance provide that the “boundaries of the [Territory] will include Tippecanoe Township, Tippecanoe County and the Town of Battle Ground, Tippecanoe County.” The adopting documents also identify the Township as the provider unit and the Town as a participating unit. The adopting documents state that the Territory “will establish a Fire Protection Territory Operating Fund from which all expense for operating and maintaining the fire protection services within the Fire Protection Territory” at a rate at “.05 for all taxable property.” They also state that the Territory will establish an equipment replacement fund “at .0333 for all taxable property in the fire territory.” Finally, the adopting documents state that the Township is authorized to establish “the funds delineated for the operation of the [Territory].” *Territory Resolution and Ordinance; Record.*

9. On February 23, 2021, the Units conducted a public hearing that was advertised on February 9, 2021, in the *Lafayette Journal & Courier*, and on February 11, 2021, in the *Lafayette Leader. Record pp. 17-27; Lafayette Journal & Courier Publisher’s Claims, Lafayette Leader Publisher’s Claims.*

10. On March 3, 2021, the Units conducted a public hearing that was advertised on February 9, 2021, in the *Lafayette Journal & Courier*, and on February 11, 2021, in the *Lafayette Leader. Record pp. 17-27; Lafayette Journal & Courier Publisher’s Claims, Lafayette Leader Publisher’s Claims.*

11. Subsequent to the adoption of the ordinances and resolutions to establish the Territory, the Units adopted applicable ordinances and resolutions to the establishment of an equipment replacement fund. This fund was advertised in the same public hearing notices as those for the hearings on the Territory establishment. *Record pp. 17-27; Lafayette Journal & Courier Publisher’s Claims, Lafayette Leader Publisher’s Claims.* The Department will dispose of the equipment replacement fund in a separate and subsequent order.

12. In support of their request for an initial maximum levy, the Units provide the following proposed budgets, rates, and levies:

Units	Operating Fund		Equipment Replacement Fund	
	Rate	Levy	Rate	Levy
Tippecanoe Township	\$0.05	\$184,985	\$0.0333	\$123,200
Battle Ground	\$0.05	\$34,708	\$0.0333	\$23,114
Territory Total		\$219,693	\$0.0333	\$146,314
Territory Budget				
	2022	\$190,000		\$90,000
	2023	\$190,000		\$90,000
	2024	\$190,000		\$90,000

*Record, p. 3.* Therefore, the Units propose a 2022 budget of \$190,000 for the Territory operating fund, funded at a rate of \$0.05 for each Unit. The Units also propose a budget of \$90,000 for the

equipment replacement fund. The Units also anticipate 1.1% - 1.6% growth in the operating fund levy for 2023 and 2024.

13. The Units also included a presentation given by Bill Jones, financial advisor for the Units, before the Units. *Record, p. 10-16*. In this presentation, Mr. Jones stated that each township participating unit currently has a fire maximum levy, but each of them were never developed based on need. *Record, p. 11*.

## ANALYSIS

14. The petition does not cite to a statutory authority for the Department to approve the creation of the Territory. Indiana Code 36-8-19-6 describes the process that the participating units must follow to establish a territory. Neither that statute nor any other provision in IC 36-8-19 requires the Department's approval before the territory can come into existence. The Department, however, may decline to approve a maximum levy for the territory if the statutory process was not followed and thus the territory was not legally formed.

15. Moreover, IC 36-8-19-6(e) provides that the ordinances and resolutions to create a territory take effect the following July 1. However, IC 36-8-19-13(a) states that the ordinances and resolutions to withdraw from a territory take effect January 1 of the following year. Therefore, although the Units have taken action to withdraw from the NETFT, for the latter half of 2021 they will remain in that territory while also being in the Territory they just established. The Department does not believe there will be a property tax impact as 2022 will be the first year of the levy for the new Territory. The Department will not comment on how the new Territory will affect any outstanding obligations the Units have to NETFT. Finally, the other participating units of NETFT have also withdrawn from that territory, meaning that there will be no levy on the tax base for NETFT for pay-2022.

16. In reliance on the Record as documented above, the Department finds that the Units complied with the procedural obligations under IC 36-8-19 in establishing the Territory.

17. The Units represented that their initial max levy is based on an initial tax rate of \$0.05 and a purported initial budget of \$190,000 for the Territory operating fund. *Record, p. 3*. The Units did not represent the expected expenses for the Territory, including personnel services, capital outlays, etc. The Units represented the Territory will continue to be served by the Township volunteer fire department for at least the next four to five years, with the prospect of hiring part-time firefighters should the need arise. *Record, p. 8*.

18. The Units represented that the \$0.05 tax rate for the operating fund was set "in conjunction with the elected officials" and the \$0.0333 rate for the equipment replacement fund was set "by statute." *Record, p. 12*. A rate of \$0.05 is expected to yield \$219,693 in revenue to the Territory in 2022. This is a 90.8% increase from the current levy attributable to the Units (\$115,118). The levy for the equipment replacement fund is not expected to change except by changes in assessed value for the Units. The Units represent that they expect the CNAV of the area of the Territory to increase by 1.2% between 2021 and 2022. *Record, p. 2*. As part of their miscellaneous revenue analysis, the Units represent that the new maximum levy for the Territory will increase LIT

distributions to each of the participating units by a total of \$29,191 in 2023 (\$24,672 for the Township and \$4,512 for the Town). *Record; p. 5.* Likewise, the new maximum levy is expected to increase excise and CVET tax distributions to the Township by \$10,280 and \$250, respectively, starting in 2022. *Record pp. 6-7.* The Units have not indicated that LIT, excise, or CVET revenue would be dedicated to the Territory.

19. Indiana Code 36-8-19-8(c) allows the provider unit to “maintain a reasonable balance, not to exceed one hundred twenty percent (120%) of the budgeted expensed.” For 2022, the Units represent that the Territory will have a budget of \$190,000 for the operating fund. Therefore, the Township can maintain an operating balance of \$228,000 ( $\$190,000 * 1.2 = \$228,000$ ). Therefore, a levy of \$219,693 would be less than what the law allows the provider unit to have as an operating balance. The Department assumes that LIT, excise, or CVET revenue would not be dedicated to the Territory, as doing so may bring the operating balance for the Territory above what is allowed by statute when added to the levy.

20. The Department finds that the Units have only provided as evidence of actual or planned expenses a proposed budget amount of \$190,000 for 2022. A levy to maintain an operating balance of \$29,693, added to the budget, yields a levy of \$219,693 to fund operations for the Territory in 2022.

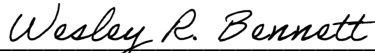
21. For purposes of IC 36-8-19-9 and 12, the Units are participating units in another fire protection territory which is dissolving. Therefore, the Units do not have any expenses for fire protection paid for or levied for out of any of their funds.

### CONCLUSION

22. The Department hereby approves a Territory operating maximum levy of \$219,693 for Pay 2022. This figure does not include any dollars attributable to an equipment replacement fund. The approved levy will be reduced by \$29,693 for Pay-2023, as the Department does not allow a levy for an operating balance after the first year.

Dated this 21<sup>st</sup> day of July, 2021.

STATE OF INDIANA  
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Wesley R. Bennett, Commissioner