

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

**IN THE MATTER OF THE REQUEST)
OF OLIVE TOWNSHIP AND THE TOWN)
OF NEW CARLISLE, ST. JOSEPH)
COUNTY, AND HUDSON TOWNSHIP,) IML22-010
LAPORTE COUNTY, FOR THE)
ESTABLISHMENT OF A NEW)
MAXIMUM LEVY FOR A FIRE)
PROTECTION TERRITORY)**

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the request of Olive Township and Hudson Township (“Townships”) and the Town of New Carlisle (“Town”), all in St. Joseph County and hereafter referred to as “Units”, for a new operating maximum levy for the expansion of a 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 or expand a fire protection territory, the legislative bodies of each unit desiring to become a part of the proposed territory, or expand an existing fire protection 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 at least three (3) public hearings 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) An agreement as to how the property that is held by the territory will be disposed of if:
 - (A) a participating unit withdraws from the territory; or
 - (B) the territory is dissolved.
 - (5) The contents of the agreement to establish the territory.
- ii. Hold at least three (3) public hearings to receive public comment on the proposed ordinance or resolution, as follows:
 - (A) The first public hearing must be held at least thirty (30) days before adopting an ordinance or a resolution to form a territory.
 - (B) At least two (2) public hearings must be held after the first public hearing, with the last public hearing held not later than ten (10) days before adopting an ordinance or a resolution to form a territory.
 - iii. The legislative body must make 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.
 - iv. The notice required for the hearings 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. Both the Town of New Carlisle and Olive Township are currently participating units in a fire protection territory. Hudson Township is being added as a participating unit.

7. On May 31, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. *Cover Letter; Record p. 1*. The petition included the following documents:

- Procedure Checklist.
- Financial impact analysis, prepared by Baker Tilly, financial advisor to Units.
- Powerpoint presentations by Baker Tilly and the New Carlisle Fire Department.
- Town of New Carlisle Ordinance.
- Olive Township Resolution.
- Hudson Township Resolution.
- Interlocal Agreement.
- Proofs of publication of legal notices (collectively "Public Notices").
- Letter dated June 1, 2022, from counsel for Units regarding publication of notices.

- Drafts of Budget Forms 1, 2, and 4B for the pay-2023 tax year.

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

8. The notices of public hearings were published on February 14 and 21, 2022, in the *South Bend Tribune* and on February 12 and 19, 2022, in the *LaPorte Herald Dispatch*. Both notices stated that the Town council and Township board will hold a public hearing on February 24, March 13, and March 28, 2022. The notices also state that the Units will vote on the establishment of the Territory after the March 28 public hearing. *South Bend Tribune Publisher's Claim for the February 14 and 21, 2022, public notice, Record pp.100-101; LaPorte Herald Dispatch Publisher's Claim for the February 12 and 19, 2022, public notice, Record 105-106.*

9. Subsequent to the publication of these notices, a second notice was published in the *South Bend Tribune* on March 3 and 10, 2022. This notice included the same information as in the prior notice, but added that there would be two (2) public hearings held on March 13, one at 1 p.m. and another at 3 p.m., both at the same location. *South Bend Tribune Publisher's Claim for the March 3 and 10, 2022, public notice, Record pp. 102-104.*

10. The notices also state the following:

- The Town and the Townships are the participating units. Olive Township is the provider unit.
- There will be a uniform property tax rate within the territory.
- The proposed budget, rate, and levy for the Territory, and the share of the levy and budget for each of the participating units for the next three (3) years.
- A copy of the proposed ordinance and resolution was made available for public inspection at the public hearing locations.
- Persons seeking additional information may contact the Olive Township trustee, Town clerk-treasurer, or Hudson Township trustee.

Public Notices, Record pp. 100-106.

11. The Town adopted an ordinance, and the Townships adopted a resolution, on March 28, 2022, to establish the Territory. *Town Ordinance, Record pp. 69-72; Olive Township Resolution, Record pp. 73-76; Hudson Township Resolution, Record pp. 77-80.*

12. The ordinance and resolutions state the following:

- The Town and Townships are authorized to become a party to the Interlocal Agreement, attached to the ordinance and resolutions, “for Expansion of the [fire territory] to include Hudson Township as a Participating Unit.”
- The area constituting the Territory include the unincorporated areas of the Townships and the incorporated area of the Town.
- Olive Township is the provider unit. The Town and the Townships are the participating units.
- There will be a uniform tax rate within the territory for both the Territory operating fund and the equipment replacement fund.
- There will be a Territory operating fund and equipment replacement fund maintained by the provider unit.

- How property used for the Territory will be disposed of in the event of withdrawal from the Territory.

Town Ordinance, Record pp. 69-72; Olive Township Resolution, Record pp. 73-76; Hudson Township Resolution, Record pp. 77-80.

13. The Units also provide an Interlocal Agreement, pursuant IC 36-8-19-6(e)(5). The Interlocal Agreement reiterates several provisions of the ordinance and resolutions, but also includes other administrative matters concerning the Territory, such as the responsibilities of the provider unit and the formation of an executive committee to oversee the Territory. *Interlocal Agreement, Record pp. 81-98.*

14. The financial impact analysis includes statements regarding the following:

- Current funding for fire services in the Territory and in Hudson Township.
- Estimated funding sources and requirements of the proposed territory.
- Estimated tax liability impact.
- Impact on selected revenues and circuit breaker credits.

Financial impact analysis; Record, pp. 6-30.

15. There were two powerpoint presentations provided. One presentation was provided by Baker Tilly and includes information related to the need for the Territory, tax and circuit breaker credit impact, the needed budget for the Territory, and the proposed tax rates. *Baker Tilly Powerpoint presentation; Record, pp. 31-60.* The second presentation was provided by the New Carlisle Fire Department and includes information about staffing needs and expected expansion in future years. *New Carlisle Fire Department presentation; Record pp. 61-67.*

16. The Units also provide a letter from legal counsel stating that the Units complied with the public notice requirement in IC 36-8-19-6(b) despite the revised notice being published in the *Herald Times* only included information about the added March 13 hearing. The letter explains that IC 5-3-1-2.3, which states that a public notice containing errors is still a valid notice if a reasonable person would not be misled by the error, applies here for two reasons. First, residents within Hudson Township are also in the *South Bend Tribune* circulation area and could also see the missing information in the timeframe that the revised *Herald Times* notice was published. Second, the revised notice did not contradict or otherwise disavow the information that was included in the *South Bend Tribune* notice. *Letter dated June 1, 2022, Record pp. 114-117.*

17. The Department will dispose of the Territory's equipment replacement fund in a separate and subsequent order.

ANALYSIS

18. The Town's ordinance establishing the Territory was adopted by a vote of 4-0. *Town Ordinance, Record p. 72.* Hudson Township's resolution by was adopted a vote of 3-0. *Hudson Township Resolution, Record p. 80.* Olive Township's resolution by was adopted a vote of 2-0. *Olive Township Resolution, Record p. 76.*

19. The notices of public hearings state the proposed tax rates and levies as follows:

Proposed Budget	2023	2024	2025
Fire Operating	\$2,660,566	\$2,758,800	\$2,863,600
Fire Territory Equipment and Replacement	\$149,989	\$151,650	\$153,385
Totals	\$2,810,555	\$2,910,450	\$3,016,985
Proposed Property Tax Levy	2023	2024	2025
Fire Operating	\$2,370,666	\$2,466,500	\$2,568,300
Fire Territory Equipment and Replacement	\$144,779	\$146,380	\$148,055
Totals	\$2,515,445	\$2,612,880	\$2,716,355
Proposed Uniform Property Tax Rate	2023	2024	2025
Fire Operating	\$0.5453	\$0.5611	\$0.5777
Fire Territory Equipment and Replacement	\$0.0333	\$0.0333	\$0.0333
Totals	\$0.5786	\$0.5944	\$0.6110

Public Notices, Record pp. 100-106.

20. The Units' Budget Form 1 states the following totals for each budgeted category in the operating fund for 2023:

Category	Proposed Amount
Personal Services	\$1,947,976
Supplies	\$104,240
Services and Charges	\$608,350
Total	\$2,660,566

In addition, the Form 1 states the Units intend to budget \$149,989 in the equipment replacement fund for capital outlays. *Budget Form 1, Record p. 108.*

21. The Units' Budget Form 2 states the following estimated non-property tax revenues to be distributed into the operating fund for 2023:

Revenue	Estimated Amount
Vehicle Excise Tax	\$85,900
LIT Certified Shares	\$30,000
EMS Revenue	\$174,000
Total	\$289,900

Likewise, the Units anticipate \$5,210 from vehicle excise taxes to go into the equipment replacement fund. *Budget Form 2, Record p. 110.*

22. The Budget Form 4B reiterates for the operating fund a proposed tax levy for 2023 of \$2,370,566 and estimated non-property tax revenue of \$289,900. It also states that the Units anticipate a loss of \$291,702 due to circuit breaker credits. *Budget Form 4B, Record p. 112.*

23. Finally, the Department recognizes the Units' attempt to comply with the requirements of IC 36-8-19-6 and accepts the arguments of Units' counsel in the June 1, 2022, letter. Indiana Code 5-3-1-2.3 states that a notice that contains errors or omissions is valid as long as (1) a reasonable person would not be misled by the error or omission; and (2) the notice is in substantial compliance with the time and publication requirements applicable under [IC 5-3-1] or any other Indiana statute under which the notice is published." The information required by IC 36-8-19-6(d) was published in both the *Herald Times* and *South Bend Tribune* for the first and third public hearing. While this information was only included for the revised notice in the *South Bend Tribune*, Hudson Township residents can take advantage not only of their proximity to New Carlisle but also the availability of the *South Bend Tribune* in paper and electronic form. Therefore, the Department cannot find that the Units did not substantially comply with the requirements of IC 5-3-1.¹

CONCLUSION

24. 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. The Units, after publishing notices under IC 36-8-19-6(b) and within information required by IC 36-8-19-6(d), conducted the required number of public hearings and within the timeframe under IC 36-8-19-6(b). The Units showed at that they made the information required under IC 36-8-19-6(c) to available to the public. Finally, the Units also adopted identical ordinances within the timeframe required by IC 36-8-19-6(b) and that contain the information required under IC 36-8-19-6(e).

25. The Department also finds that the Units have provided the Department with information sufficient to account for the Units' calculation of an initial maximum levy of \$2,370,566. Specifically, this figure reflects expenses for personal services (\$1,947,546); supplies (\$104,240); and services and charges (\$608,350); less non-property tax revenue (\$289,900) ($\$1,947,546 + \$104,240 + \$608,350 = \$2,660,566$; $\$2,660,566 - \$289,900 = \$2,370,566$).

26. The Department hereby approves a Territory operating maximum levy of \$2,370,566 for Pay 2023. This figure does not include any dollars attributable to an equipment replacement fund.

27. For purposes of IC 36-8-19-9 and 12, the certified 2022 Budget Order for LaPorte County indicates that Hudson Township has the following funds from which fire protection services can be paid:

¹ The June 1 letter from the Units' counsel also made an argument that uses IC 5-14-1.5-7, a statute in the Open Door Law. The letter also cites to the Court of Appeals decision in *Town of Merrillville v. Blanco*, 687 N.E.2d 191 (1997), which also involves an application of the Open Door Law. Counsel in this letter argues that, from both IC 5-14-1.5-7 and *Blanco*, Indiana law has a policy that a final action should not be voided on account of failure to comply with public notice requirement without careful consideration of the surrounding circumstances. The Department appreciates the thoughtfulness of the argument. Nevertheless, the Department declines to consider this argument because both IC 5-14-1.5-7 and *Blanco* concern public access under the Open Door Law and not publication of notices. The Department is unaware of, and the Units have not provided, any case law that applies either the statute or *Blanco* to IC 5-3-1. Moreover, the Department already accepts the substantial compliance argument made in the letter on other grounds.

Participating Unit	Fund Name	DLGF Fund Number
Hudson Township	Township Fire	1111
	Cumulative Fire	1190

28. Pursuant to IC 36-8-19-9 and 12, the township fire fund and cumulative fire fund for Hudson Township will be eliminated and their respective levies reduced to \$0.

Dated this 2nd day of August, 2022.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner