

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

**IN THE MATTER OF THE REQUEST )  
OF THE TOWN OF FRENCH LICK AND )  
THE TOWN OF WEST BADEN, ORANGE ) IML22-007  
COUNTY, FOR THE ESTABLISHMENT OF )  
AN INITIAL MAXIMUM LEVY FOR )  
A 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 the Town of West Baden and the Town of French Lick, all in Orange County and hereafter referred to as “Units”, for an initial operating maximum levy for 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 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 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. On April 8, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. *Cover Letter, Record pp. 1-2*. The petition included the following documents:

- Procedure Checklist.
- Financial impact analysis.
- Petition letter.
- Proofs of publication of legal notices.
- Minutes of public hearings.
- Interlocal agreement to form the Territory.
- Town of French Lick Ordinance 22-06.
- Town of West Baden Ordinance 2022-2.
- Budget Forms 1, 2, and 4B.
- Powerpoint presentations given by Baker Tilly, financial advisor for the Units, for each of the public hearings.

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

7. On May 23, 2022, legal counsel for the Orange County Board of Commissioners submitted a letter to the Department claiming that the Department should not determine an initial maximum levy for the Territory because the Units did not properly comply with certain statutory requirements to form the Territory (the “May 23 letter”). *Record, pp. 152-163*. Subsequently, on June 15, 2022, the Units, through their financial advisor, submitted a letter in response to the claim made in the May 23 letter (the “June 15 letter”). *Record, pp. 254-256*.

8. The notices of public hearings were published on February 17, 2022, in the *Paoli-French Lick News-Herald*. Both notices stated that the Units will hold public hearings on February 28, March 8, and March 30, 2022. The notices also state that the Units will vote on the establishment of the Territory after the third and final public hearing. *News-Herald Publisher’s Claim for the February 17, 2022 public notice, Record, p. 26*.

9. The Units also published in the *News-Herald* on March 3, 2022, a notice of a public hearing to be held on March 8 and 15, 2022. *News-Herald Publisher’s Claim for the March 3, 2022 public notice, Record, pp. 27-28*.

10. Both Units adopted their own ordinances on March 30, 2022, to establish the Territory. *Town of French Lick Ordinance 22-06; Town of West Baden Ordinance 2022-2*.

11. Both ordinances state the following:

- The Territory is created under the terms of an interlocal agreement, incorporated by reference into the ordinances.
- The boundaries of the Territory will extend to the municipal boundaries of both the Town of French Lick and the Town of West Baden.
- The Town of French Lick will be identified as the provider unit.
- The participating units include the Town of French Lick and the Town of West Baden.
- The Territory shall have a uniform rate upon all taxable property in the Territory.
- The Town of West Baden will participate in annual budgeting and rate establishment for the Territory.

*Town of French Lick Ordinance 22-06, Record, pp. 56-58; Town of West Baden Ordinance 2022-2, Record, pp. 60-61*.

12. The Town of French Lick’s ordinance also includes the following:

- After the statement about the Town of West Baden’s participation in budgeting and rate establishment: “However, West Baden Spring’s failure or refusal to participate in the annual budgeting and rate establishing process shall not deprive French Lick of its right to proceed and to approve the annual budget and requisite rates.”
- The French Lick Town Council will act as “the governing body and ultimate authority in the [Territory], including its day-to-day operations.”

*Town of French Lick Ordinance 22-06, Record, p. 57*.

13. The petition includes statements regarding the following:

- The need to create the Territory.
- The public hearings and the notices of same.

- The proposed tax rates and levies for budget years 2023, 2024, and 2025.
- Staffing levels and planned services.
- Use of revenue for equipment.
- “Major content” of the ordinance and resolution.
- Impact of the Territory on local income tax distributions, excise/CVET distributions, and property tax caps in the county.
- The Town’s expenses from its general fund for fire services.

*Cover Letter, Record, pp. 3-4.*

14. The powerpoint presentations for the hearings on the February 28, March 8, and March 15 include slides containing information related to the need for the Territory, tax impact, the needed budget for the Territory, and the proposed tax rates. *Record, pp. 70-151.*

### ANALYSIS

15. The Town of French Lick’s ordinance establishing the Territory was adopted by a vote of 3-0. *Town of French Lick Ordinance 22-06, Record, p. 57.* The Town of West Baden’s ordinance was adopted a vote of 3-0. *Town of West Baden Ordinance 2022-2, Record, p. 62.*

16. As stated above, both the Orange County Board of Commissioners submitted a letter with exhibits regarding the invalidity of the Units’ creation of the Territory due to alleged procedural defects. The Units likewise submitted a letter in response to the allegations made by the Orange County Commissioners. Neither IC 36-8-19 nor Department regulations permit a review or remonstrance opportunity on the creation of a Territory. Similarly, neither IC 36-8-19 nor Department regulations permit a response by the units seeking to create a Territory.

17. The Orange County Commissioners claim the Territory should not be given an initial maximum levy because of the statutory processes in IC 36-8-19-6 not being followed, citing to *Van Buren Twp. v. Dep’t of Local Gov’t Finance*<sup>1</sup>, as supporting the claim. In *Van Buren Twp*, the Tax Court affirmed the Department’s denial of a request to set an initial maximum levy for a fire protection territory because the participating units did not demonstrate that the public notice requirements in IC 36-8-19-6 were properly followed. As such, the Department reviews whether the Units complied with the requirements of IC 36-8-19, before determining an initial maximum levy, and may decline to make a determination of it finds the statutory process was not properly followed.

18. The May 23 letter alleges the following:

- The Units did not include a statement in the public notices as to whether the ordinance or resolution will require uniform tax rates.
- The tax rates and levies stated in the notice differed from what was presented at the hearings.
- The powerpoint presentation at the hearings did not include a description of capital improvements or staffing levels.
- There were slides added to the powerpoint presentation between the February 28 and March 8 hearings.

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<sup>1</sup> 10 N.E.3d 104 (2014).

- There were differences between the information presented at the March 8 and March 15 hearings.
- The funding and revenue amounts were inconsistent.

*May 23 letter, Record, pp. 152-163.* The objection letter includes five “exhibits” which are used as support for the allegations. *Record, pp. 164-253.*

19. The financial advisor for the Units submitted a response to the May 23 letter, stating the following:

- The public notices state that there will be a “proposed uniform tax rate.”
- Fire department staff spoke about staffing levels and equipment needs at the public hearings.
- Information regarding the proposed budget, rate, and levy was consistent throughout.
- A third party vendor made an error in the circuit breaker impact calculation before the March 15 hearing. This was caught and so new slides were added to account for the changes.
- Adjustments to the budget were necessary because the circuit breaker loss would end up underfunding the Territory.
- There was substantial compliance with statutes.

*June 15 Letter, Record, pp. 254-256.*

20. The Department acknowledges the arguments made from both parties, although it reiterates that there is no objection opportunity. However, the Department declines to consider either the contents of the May 23 letter on behalf of the Orange County Commissioners or the June 15 letter on behalf of the Units. For reasons that are different from those stated above, the Department finds that the Units did not properly establish the Territory.

21. As noted above in Paragraph 11, the Town of French Lick’s Ordinance included provisions that were not included in that of West Baden. Therefore, the Department finds that the ordinances of the Town of French Lick and of the Town of West Baden are not identical to each other. Indiana Code 36-8-19-6(b)(1) requires that each participating unit’s ordinance or resolution be identical to those adopted by other participating units also joining the Territory. The term “identical” is not defined in statute. Indiana Code 1-1-4-1(1) provides that, in the construction of all statutes of this state, words and phrases “shall be taken in their plain, or ordinary and usual, sense.” Black’s Law Dictionary defines “identical” as “the word used to describe a thing that is the same as something else in all respects.”<sup>2</sup> The Merriam-Webster Dictionary defines the term as “being the same,” “having such close resemblance as to be essentially the same,” and “having the same cause or origin.”<sup>3</sup>

22. The Department does not read the term “identical” as requiring every component of each ordinance be one and the same. Such components like the name of the town, the ordinance number, date the action is taken, and the signature and attestation lines can reasonably be expected to be different between each ordinance, since each participating unit must adopt its own ordinance. However, the provisions affecting governance and administration of the Territory are not identical. The Town of West Baden’s ordinance does not include a statement that designates

<sup>2</sup> <https://thelawdictionary.org/identical/>

<sup>3</sup> <https://www.merriam-webster.com/dictionary/identical>

the French Lick Town Council as the “governing body and ultimate authority in the [Territory], including its day-to-day operations.” It also does not include a statement that the Town of West Baden’s failure to assist with budget development and rate establishment “shall not deprive French Lick of its right to proceed and to approve the annual budget and requisite rates.” That such provisions are in one ordinance and not in the other suggests that the participating units have not come to an agreement as to the operations of the Territory.

23. The interlocal agreement does not include either of the provisions particular to the Town of French Lick ordinance. Thus, even though the interlocal agreement has been incorporated by reference into both ordinances, it does not correct the inconsistency between the two.

24. In light of the above, the Department finds that the Units did not adopt identical ordinances in compliance with IC 36-8-19-6(b). Therefore, the Department finds that the Units did not validly establish a fire protection territory in compliance with the requirements of IC 36-8-19-6.

### CONCLUSION

25. In reliance on the Record as documented above, the Department finds that the Units have not 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. However, the Units did not adopt identical ordinances within the timeframe required by IC 36-8-19-6(b). Therefore, the Department finds that the Units have not established a fire protection territory for which an initial maximum levy can be approved.

26. Therefore, the Department declines to approve an initial maximum levy for the Territory.

Dated this 10th day of August, 2022.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

  
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Wesley R. Bennett, Commissioner