

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

**IN THE MATTER OF THE REQUEST)
OF DAVIS TOWNSHIP AND THE)
TOWN OF HAMLET, STARKE COUNTY,) IML22-001
FOR THE ESTABLISHMENT OF)
AN INITIAL MAXIMUM LEVY FOR)
A FIRE PROTECTION TERRITORY)**

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the request of Davis Township (“Township”) and the Town of Hamlet (“Town”), all in Starke 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 March 24, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. *Record, Cover Letter*. The petition included the following documents:

- Procedure Checklist.
- Petition to create the Territory, prepared by Bill Jones, consultant to Units.
- Powerpoint presentation by Bill Jones.
- Town Ordinance 03232022A.
- Township Resolution 202203-01.
- Proofs of publication of legal notices.

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

7. The notices of public hearings were published on January 20, 2022, in the *Knox Leader*. Both notices stated that the Town council and Township board will hold public hearings on February 2, February 8, and March 8, 2022. The notices also state that the Units will vote on the establishment of the Territory after the March 8 public hearing. *Knox Leader Publisher's Claim for the January 20, 2022 public notice*.

8. The Units also published in the *Knox Leader* on February 17, 2022, a notice of a public hearing to be held on February 28 and March 8, 2022. *Knox Leader Publisher's Claim for the February 17, 2022 public notice*. The Units clarified that the second notice was made because the February 2 public hearing was cancelled due to a snowstorm and was rescheduled for February 28, 2022. *Petition*.

9. The Town adopted an ordinance on March 23, 2022, and Walnut Township adopted a resolution on March 22, 2022, to establish the Territory. *Town Ordinance 03232022A; Township Resolution 202203-01*.

10. The ordinance and resolutions state the following:

- The boundaries of the Territory will include the Town and the Township.
- The Town will be identified as the provider unit.
- The participating units include the Town and the Township.
- The provider unit “will establish Fund 8604 Fire Territory Operating Fund from which all expense for operating and maintaining the fire protection services within the Fire Protection Territory, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, and all other expenses lawfully incurred with the [Territory] shall be paid.”
- “The Territory[*sic*] will adopt a uniform tax rate upon all taxable property within the territory.”
- The Territory will not hold title to any equipment purchased by the territory and property will be retained in the fire department using the equipment upon dissolution of the Territory.
- The provider unit will establish an equipment replacement fund for the purpose of “purchas[ing] fire protection equipment, including housing, that will be used to serve the entire territory.”

Town Ordinance 03232022A; Township Resolution 202203-01.

11. 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.

The Petition states the “works cited” include Department memoranda, reports, and orders, including the 2022 Certified Budget Order for Starke County, the 2022 Estimated Property Tax Cap Impact Report, the Estimated Miscellaneous Revenues for Budget Year 2022, the Calculation of Estimated Maximum Levy for Budget Year 2022, Certified Local Income Tax Distributions for Starke County for Budget Years 2021 and 2022, and Certified Taxing District Rates for Starke County in 2022. The Petition also cites to “IC 36-8-18[*sic*]” the chapter of the Indiana Code concerning fire protection territories. *Petition*.

12. The powerpoint presentation includes information related to the need for the Territory, tax impact, the needed budget for the Territory, and the proposed tax rates. *Powerpoint presentation.*

ANALYSIS

13. Both public hearings state the Units intend to adopt uniform tax rates within the Territory. The notices also include the name of Bill Jones, serving as consultant for the Units, as well as his phone number. Finally, the notices state the proposed tax rates and levies as follows:

Unit	Operating Fund		Building and Equipment Replacement Fund	
	Rate	Levy	Rate	Levy
Davis Township	0.1579	71,342	0.0333	15,046
Hamlet Town	0.1579	27,642	0.0333	5,830
Total		98,985		20,875
Territory Budget 2023		99,500		20,000

Knox Leader Publisher’s Claim for the January 20, 2022 public notice; Knox Leader Publisher’s Claim for the February 17, 2022 public notice.

14. The Town’s ordinance establishing the Territory was adopted by a vote of 2-0. *Town Ordinance 03232022A*. The Town Council has three (3) members, according to the Town’s adopted 2022 budget ordinance. *Town’s Budget Form 4*, dated October 27, 2021. The Township’s resolution by was adopted a vote of 2-0. *Township Resolution 202203-01*.

15. Both the Town’s ordinance and Township’s resolution state that, in addition to a uniform tax rate, the tax rate for the Territory’s operating fund will be “.1579 for all taxable property.” *Town Ordinance 03232022A; Township Resolution 202203-01*. The Department believes the Units intend the reader to interpret this as “\$.1579 per \$100 of assessed valuation”, at least to those readers who are familiar with how property taxes are actually imposed; the Department will not assume that not all readers of either the ordinance or resolution will be as familiar with it as the drafter of either document. The Department cautions the Units about unintended consequences of stating an exact property tax rate in an ordinance or resolution. A property tax rate is a function of 1) the certified net assessed value attributed to the fund for which the tax rate is imposed and 2) the levy imposed for the fund. By stating that the tax rate is an exact number, one infers that the Units intend to impose that tax rate every time they impose a property tax for the Territory operating fund until both the ordinance and resolution are changed or repealed. However, a change in the net assessed value of taxable property in the Territory, or an increase in the maximum allowable levy for the Territory’s operating fund¹, will change the resulting property tax rate. Should the Units adopt the Territory’s budget such that the adopted operating fund tax rate is any number but \$.1579 per \$100 of assessed valuation, they will have done so in violation of this ordinance and resolution.

16. The Units also provide a document entitled “Hamlet/Davis Township Fire[sic] Territory – Hearing Presentation” which includes powerpoint slides made by Bill Jones. The first eighteen

¹ Participating units are able to increase the maximum allowable levy of a fire protection territory under 6-1.1-18.5-10.5.

slides of the powerpoint introduce the concept of a fire protection territory, the concept of the maximum levy, and the process with forming a territory. *Powerpoint presentation.*

17. Slide 19 of the powerpoint presents the following expenses and amounts for an operating budget:

Operations	62,400	Operating supplies, Fuel, Medical Supplies Communications, Training, Volunteer Allowances
Maintenance & Repairs	13,800	Preventative Maintenance, trucks, air compressor[sic], Hurst tools, Repairs
Safety	7,800	SCBA testing, pump testing, ladder testing
Capital	15,000	Minor equipment purchases
Total	99,000	

Powerpoint presentation.

18. Slide 21 of the powerpoint reiterates the proposed tax rates and levies as stated in the public notices, but also including proposed levies for budget year 2024 and 2025, as follows:

Unit	Operating Fund		Building and Equipment Replacement Fund	
	Rate	Levy	Rate	Levy
Davis Township	0.1579	71,342	0.0333	15,046
Hamlet Town	0.1579	27,642	0.0333	5,830
Total		98,985		20,875
Territory Budget 2023		99,500		20,000
Territory Budget 2024		101,500		20,000
Territory Budget 2025		105,000		20,000

Powerpoint presentation.

19. Neither the powerpoint presentation nor any other document indicates that the Units will use non-property tax revenue to fund the Territory. In addition, the Units did not indicate that they will have an operating balance for the Territory.

20. The Units confirmed that the Town has spent \$14,903 in property tax revenues from its general fund for fire expenses in 2022. *Petition.*

CONCLUSION

21. 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).

22. 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 \$99,000. Specifically, this figure reflects expenses for operations (\$62,400); maintenance and repairs (\$13,800); safety (\$7,800); and capital expenses (\$15,000).

23. The Department hereby approves a Territory operating maximum levy of \$99,000 for Pay 2022. This figure does not include any dollars attributable to an equipment replacement fund.

24. For purposes of IC 36-8-19-9 and 12, the certified 2022 Budget Order for Starke County indicates that the Units each have the following funds from which fire protection services can be paid:

Participating Unit	Fund Name	DLGF Fund Number
Davis Township	Township Fire	1111
	Cumulative Fire	1190
Town of Hamlet	General	0101

25. Pursuant to IC 36-8-19-9 and 12, the township fire funds for the Township will be eliminated and its levy reduced to \$0. Likewise, the cumulative fire fund for Davis Township will be eliminated and its levy reduced to \$0. The Town of Hamlet's civil maximum levy will be reduced by \$14,903.

Dated this 22nd day of July, 2022.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner