

**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 LEWISVILLE AND)
THE FRANKLIN TOWNSHIP, HENRY) IML23-001
COUNTY, 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 the Town of Lewisville (“Town”) and Franklin Township (“Township”), all in Henry 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 23, 2023, the Units submitted to the Department a petition for an initial maximum levy for the Territory. The petition included the following documents:

- Financial impact information by Krohn & Associates, financial advisor to the Units.
- Cover letter.
- Proofs of publication of legal notices.
- Interlocal agreement to form the Territory.
- Town Ordinance No. 021523.
- Township Resolution No. 2023-1.

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

7. The notice of the public hearings was published on January 20, 2023, in the *New Castle Courier Times*. The notice stated the following:

- The Units will hold public hearings on January 30, February 13, and February 28, 2023. The public hearings will be held at the Town office building at 101 E. Main St., Lewisville, Indiana.

- The Units will vote on the establishment of the Territory after the third and final public hearing.
- The Town and the Township are the participating units. The Township is the provider unit.
- There will be a uniform property tax rate within the territory.
- The first year proposed budget, rate, and levy for the Territory, and the share of the levy and budget for each of the participating units.
- A copy of the proposed ordinance and resolution was made available for public inspection at the Town office.
- Persons seeking additional information may contact the Township trustee or the Town clerk-treasurer.

Courier Times Publisher's Claim for the January 20, 2023 public notice.

8. The Town adopted its ordinance and the Township adopted its resolution on March 15, 2023, to establish the Territory. *Town Ordinance No. 021523; Township Resolution No. 2023-1*. The ordinance and resolution state the following:

- The Territory is created under the terms of an interlocal agreement.
- The boundaries of the Territory “extend to the municipal boundaries of the Town of Lewisville and the boundaries of Franklin Township.
- The Township is the provider unit.
- The Town and Township are participating units.
- An advisory board for the Territory “shall act as the governing body of the [Territory], including its day-to-day operations.”
- There shall be a uniform rate of taxation.¹
- Both Units shall “participating in both the annual budgeting and tax rate establishing process,” but either the Town or Township’s failure or refusal to participate shall not deprive the other unit “of its right to proceed and to approve the annual budget and requisite.”
- If either unit withdraws from the Territory, “the withdrawing unit’s maximum permissible ad valorem property tax levy, with respect to fire protection services, shall be initially increased by the amount of the particular unit’s previous year levy.” Any additional increases to the levy attributed to fire protection services “are subject to the tax levy limitations under Indiana law, except for the part of the unit’s levy that is necessary to retire the unit’s share of any debt incurred while the unit was a participating unit.”

Town Ordinance No. 021523; Township Resolution No. 2023-1.

¹ The Ordinance states in part that the Territory “shall have a uniform rate of taxation upon all taxable property within the Territory.” *Ordinance, p. 2*. The Resolution includes a similar phrase, but omits “upon all taxable property within the Territory.” *Resolution, p. 2*. The Interlocal Agreement, attached and incorporated into the Ordinance and Resolution, states that the Town, as participating unit, agrees to “impose a uniform tax rate upon all of the taxable property within the Territory.” *Interlocal Agreement, p. 2*. The Department expects provisions of ordinances and resolutions concerning governance, administration, and budgeting to be identical so as to avoid confusion or ambiguity between the Units and the taxpayers. With advancements in technology, compliance with IC 36-8-19-6(b) can be as simple as electronically copying the entirety of one document, electronically pasting it onto another, and changing the name of the unit, names of unit officials, etc. However, to the extent a uniform tax rate agreed to under IC 36-8-19-6(e)(4)(A) is commonly understood to mean a tax rate that is uniform on all taxable property between all participating units, as opposed to different rates for participating units under IC 36-8-19-6(e)(4)(B), then the Department will consider the ordinance and resolution to be “identical” for purposes of IC 36-8-19-6 despite omitted phrase in the latter.

9. The interlocal agreement contains provisions concerning the following:
- Creation and purpose of the Territory.
 - Imposition of a uniform tax rate.
 - Designation and responsibilities of the provider unit.
 - Creation and responsibilities of an advisory board.
 - Creation and responsibilities of a fire department to serve the Territory.
 - Budget development and adoption, including establishing an equipment replacement fund.
 - Incurrence of indebtedness, including approval by the Units and the Department in accordance with IC 36-8-19-8.5(b).²
 - Duration of agreement, expansion of Territory by participating units, and conditions of withdrawal from Territory.
 - All assets of the Territory purchased from the equipment replacement fund shall become the property of the Provider Unit in the even the Territory is dissolved.

Interlocal agreement.

10. The Units also provided a set of slides made by Krohn & Associates detailing the need for the Territory and the impact of the Territory’s levies and rates on homeowners. The Units did not provide information about the proposed 2023 budget for the Territory, but did include a proposed levy of \$150,000, a territory operating fund rate of \$0.2483, and an equipment replacement fund rate of \$0.0333. *Financial impact statement.*

ANALYSIS

11. The Town’s ordinance establishing the Territory was adopted by a vote of 3-0. *Town Ordinance No. 021523.* The Township’s resolution was adopted a vote of 3-0. *Township Resolution No. 2023-1.*

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

Lewisville-Franklin Township Fire Protection Territory	
First Year Proposed Budget	\$150,000
First Year Proposed Levy	\$150,000
First Year Proposed Rates (Uniform)	\$0.2483 total
Franklin Township (Provider Unit)	
First Year Proposed Budget: \$150,000, of which Franklin Township bears 88.1%	
First Year Proposed Rates (Uniform)	\$0.2483 total
First Year Proposed Levy (Units Share)	\$132,150

² Ind. Code § 36-8-19-8.5(b) stated prior to 2016 that the Department must approve debt prior to incurrence and payment of debt service out of the equipment replacement fund. This provision was removed by Section 25 of House Enrolled Act 1273-2016.

Town of Lewisville	
First Year Proposed Budget: \$150,000, of which Town of Lewisville bears 11.9%	
First Year Proposed Rates (Uniform)	\$0.2483 total
First Year Proposed Levy (Units Share)	\$17,850

Courier Times Publisher’s Claim for the January 20, 2023 public notice.

13. The Units did not provide a copy of Budget Form 1, 2, or 4B. The Units, however, provided a copy of a series of charts with the titles “Current Tax Rate Breakdown,” and “Estimated Annual Impact on Homeowner Tax Bills,” “Estimated Annual Impact on Commercial Property (Equipment).” These charts indicate the potential impact of the Territory’s finances on taxpayers and do not show a breakdown of the Territory’s budget. *Financial impact statement.*

14. The Interlocal Agreement states that the Units agree to create a new fire department, consisting of full-time and volunteer staff, the number of which are to be set by the fire department chief and the Territory executive board. The Interlocal Agreement also says the Territory operating fund will be used for “all expenses of operating and maintaining fire protection services for the Territory.” *Interlocal Agreement.*

15. The public notice published in the *Courier Times* indicate that the Units expect a budget of \$150,000 for 2024, all of which will be funded by a property tax levy. There is no indication that the Units will use part of that levy to build an operating balance; IC 36-8-19-8(c) states the balance of the operating fund for the Territory may not exceed 120% of budgeted expenses. In addition, the Units did not represent that any other revenues, including non-property tax revenues, will be provided to fund the Territory.

16. For purposes of IC 36-8-19-9 and 12, the certified 2023 Budget Order for Henry 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
Town of Lewisville	General	0101
Franklin Township	Township Fire	1111
	Cumulative Fire	1190

17. Upon a follow-up inquiry, legal counsel for the Units indicated the Town of Lewisville spent \$9,000 on fire protection services in budget year 2022. *E-mail from Joseph Rhettts, counsel for Units, to David Marusarz, deputy general counsel for Department, August 16, 2023, 5:46 p.m.* The Department will therefore rely on this figure when adjusting the Town’s maximum levy pursuant to IC 36-8-19-9 and 12.

CONCLUSION

18. 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).

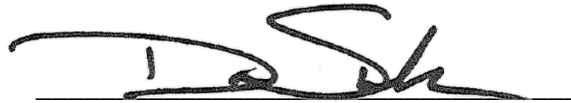
19. The Department also finds that the Units have provided the Department with information sufficient to account for the Units' calculation of an initial maximum levy of \$150,000. Specifically, this figure an estimated general fund budget (\$150,000), without further adjustment as the Units have neither represented any additional funds will be applied nor will a levy be used to build an operating balance.

20. Therefore, the Department **APPROVES** an initial maximum levy for the Territory operating fund in the amount of \$150,000 for Pay-2024. This figure does not include any dollars attributable to an equipment replacement fund.

21. For purposes of IC 36-8-19-9 and 12, the firefighting fund and cumulative fire fund for Franklin Township will be discontinued. In addition, the civil maximum levy for the Town of Lewisville will be reduced one-time by \$9,000. Both changes will be applied starting with taxes first due and payable in 2024.

Dated this 21 day of August, 2023.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

A handwritten signature in black ink, appearing to read 'D. Shackle', written over a horizontal line.

Daniel Shackle, Commissioner