

**DEPARTMENT OF LOCAL GOVERNMENT FINANCE
100 NORTH SENATE AVENUE
IGC-N, ROOM N1058
INDIANAPOLIS, INDIANA 46204**

**IN THE MATTER OF THE PETITION)
OBJECTING TO THE ESTABLISHMENT)
OF AN EQUIPMENT REPLACEMENT FUND BY) **OBJ 20-003**
NORTHEAST ALLEN COUNTY FIRE)
PROTECTION TERRITORY)**

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana law allows the participating units of a fire protection territory to establish or reestablish an equipment replacement fund (“Fund”) pursuant to IC 36-8-19-8.5 and IC 6-1.1-41.
2. The Fund may be used to purchase fire protection equipment, including housing, that will be used to serve the entire territory. The Fund may also be used to pay off debt incurred by the participating units to purchase fire protection equipment. The maximum property tax rate that may be imposed for the Fund is \$0.0333 per \$100 of assessed valuation.
3. The requirements and procedures specified in IC 6-1.1-41 concerning the establishment or re-establishment of a cumulative fund, the imposing of a property tax for a cumulative fund, and the increasing of a property tax rate for a cumulative fund apply to:
 - a. the establishment or re-establishment of a Fund;
 - b. the imposing of a property tax for a Fund; and
 - c. the increasing of a property tax rate for a Fund.
4. By joint operation of IC 36-8-19-8.5 and IC 6-1.1-41, taxpayers may object to a fire protection territory’s proposed Fund establishment.
5. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund establishment.

6. As discussed below, taxpayers in the Northeast Allen County Fire Protection Territory (“Territory”) timely objected to the Territory’s proposed Fund establishment, thereby obligating the Department to conduct a public hearing and issue a determination concerning the Territory’s proposal.

7. For the reasons stated below, the Department **APPROVES** the Territory’s proposed Fund establishment.

RELEVANT PROCEDURAL HISTORY

8. Pursuant to IC 36-8-19-8.5, to establish or reestablish a Fund, the legislative bodies of each participating unit must adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township), and the following requirements must be met:

- a. The ordinance or resolution is identical to the ordinances and resolutions adopted by the other participating units.
- b. Before adopting the ordinance or resolution, each participating unit must comply with the notice and hearing requirements of IC 6-1.1-41-3.
- c. The ordinance or resolution authorizes the provider unit to establish the Fund.
- d. The ordinance or resolution includes at least the following:
 1. The name of each participating unit and the provider unit.
 2. An agreement to impose a uniform tax rate upon all of the taxable property within the territory for the Fund.
 3. The contents of the agreement to establish the fund.

9. Indiana Code 6-1.1-41-3 requires a fire protection territory that decides to establish or reestablish a Fund to give notice of the proposal to the affected taxpayers and hold a public hearing on the proposal before presenting it to the Department for approval. Notice of the proposal and of the public hearing must be given by publication in accordance with IC 5-3-1. If such a proposal is adopted, notice of adoption must be published in accordance with IC 5-3-1-2(i) in a manner prescribed by the Department.

10. Pursuant to IC 6-1.1-41-6 and not later than noon 30 days after the publication of the notice of adoption, taxpayers may file a petition with the county auditor stating their objections to a proposed Fund establishment. State law is silent as to the number of taxpayers needed to validly object to a fire protection territory’s proposed Fund establishment. Upon the filing of the petition, the county auditor must immediately certify the petition to the Department.

11. The Department must, within a reasonable time, fix a date for a hearing on an objection petition and give notice of the hearing to the county auditor and the first ten taxpayers whose names appear on the objection petition.¹

12. After the hearing, the Department must certify approval, disapproval, or modification of the proposal to the county auditor.²

¹ IC 6-1.1-41-7, 8

² IC 6-1.1-41-9

13. The Territory published notice of the public hearing on its proposed Fund establishment on June 9 and 16, 2020 in the *East Allen Courier* and the *Fort Wayne Journal Gazette*. *East Allen Courier Publisher's Claim; Journal Gazette Publisher's Claim; IC 6-1.1-41-3*.

14. On June 22, 2020, the Territory's participating units (Cedar Creek and Springfield Townships, and the Town of Grabill) conducted a public hearing. Cedar Creek Township then adopted a resolution on June 27, 2020, and Springfield Township and the Town of Grabill on June 30, 2020, establishing the Fund at a rate of \$0.0333 per \$100 of assessed valuation. *East Allen Courier Publisher's Claim; Journal Gazette Publisher's Claim; Town of Grabill Ordinance #690-2020; Cedar Creek Township Resolution #2020-3; Springfield Township Resolution Establishing the Northeast Allen Fire Protection Territory Equipment Replacement Fund; IC 36-8-19-8.5*.

15. The Territory published notice of adoption of the Fund establishment in the *East Allen Courier* and the *Fort Wayne Journal Gazette* on June 30, 2020. *East Allen Courier Publisher's Claim; Journal Gazette Publisher's Claim; IC 6-1.1-41-3*.

16. On July 14, 2020, an objection petition signed by at least 10 verified taxpayers was filed with the Allen County auditor, who certified it to the Department on July 15, 2020. *Petition Objecting to Tax Rate Increase; E-mail from Nicholas D. Jordan, Allen County Auditor, to the Department, July 15, 2020 at 9:13 a.m. (on file with Department); IC 6-1.1-41-6*.

17. The Department scheduled a hearing on the petition for 3:00 p.m. EDT on August 25, 2020 and provided notice of the hearing to the Territory attorney and the first ten taxpayers whose names appeared on the petition. *Notice of August 25 Hearing to Territory; Notice of August 25 Hearing to Taxpayer*. IC 6-1.1-41-8. The public hearing was conducted via teleconference, due to the public health emergency declared by Governor Eric Holcomb on March 6, 2020 and renewed on July 30, 2020, and a directive of the Governor to conduct public meetings electronically on account of the emergency. *Executive Order #20-02; Executive Order #20-04; Executive Order #20-38*.

18. The Department conducted the hearing at 3:00 p.m. EDT on August 25, 2020. Department staff member David Marusarz conducted the hearing. *Hearing Officer's Report*.

19. The no one testified at the hearing as opponents. However, prior to the hearing the Department received written statements from the following:

Dennis DeWitt
Mark and Martha Ringenberg

20. The following testified at the hearing on behalf of the Territory:

Steve Herman, Cedar Creek Trustee
Brandon Scruggs

21. Objectors presented the following exhibits, which are thus part of the Record:
Objectors' Exhibit A – E-mail from Dennis DeWitt to the Department, August 25, 2020, 6:18 a.m.
Objectors' Exhibit B – E-mail from Mark and Martha Ringenberg to Department, August 25, 2020, 2:27 p.m.
Objectors' Exhibit C – E-mail from Doug Samuels to Department, September 2, 2020, 9:15 p.m.
22. Proponents presented the following exhibits, which are thus part of the Record:
Proponents' Exhibit 1 – Baker Tilly Fiscal Impact Analysis Presentation of Establishment of Fund, August 25, 2020.
23. The Department recognizes the following items as part of the Record:
(1) The Hearing Procedures Script for the August 25 hearing.
(2) The Hearing Record of Evidence for the August 25 hearing.
(3) A digital video recording of the August 25 hearing.
(4) Cedar Creek Township Resolution.
(5) Springfield Township Resolution.
(6) Town of Grabill Ordinance
(7) Objectors' Petition, filed July 14, 2020.

Throughout this Order, any reference to a particular individual's testimony will also be a reference to the digital recording of the hearings and to the hearing officer's reports.

SUMMARY OF THE PARTIES' CONTENTIONS

A. Summary of Objectors' Contentions

24. With the establishment of the Territory, property taxes on farmland in Cedar Creek and Springfield Townships will already be increasing by 14.3%. Adding a tax for the Fund will be a difficult burden especially in light of the current economic crisis. In addition, the Fund was passed without taxpayers' knowledge or approval at the same hearing as the hearing to establish the Territory. *Objectors' Exhibits A & B.*

25. Formation of the Territory is not supported by many in the area and the participating units failed to listen to alternative ways of funding for fire services. The legislative bodies were composed of current and former firefighters who had an incentive to establish the Territory. The public meetings on forming the Territory were held during the pandemic, making it difficult for the public to be informed. *Objectors' Exhibits B & C.*

26. The notice on the Fund was published prior to the vote on the Territory, showing that they did not want to hear from the public. *Objectors' Exhibit C.*

27. A neighboring township notified the Territory of the township's intent to "discontinue services" which will reduce the Territory's fire and EMS calls from 1900 to about 1000.

The lower number of runs, less than 1 daily, makes the Territory less feasible. *Objectors' Exhibit C.*

B. Summary of Proponents' Contentions

28. The Territory was established to provide for full-time firefighters, as there has been a lack of volunteers. There are 3 fire stations serving the Territory that have to be renovated as they were not designed to accommodate full-time staff. The fire department that will serve the Territory has fire trucks ranging from 5 to 21 years old, with 15 years being the average. The County is also pushing fire departments to replace their VHF radios with more expensive 800 MHz radios as part of a countywide mutual aid agreement. The Fund will also be used to replace bunker gear, at a cost of about \$60,000 per year. The plan is to use the Fund instead of taking out debt, as the latter would mean taxpayers would have to pay for the interest payments. *Testimony of Steve Herman.*

29. The tax levy for the Fund is expected to generate about \$274,000 in revenue starting in 2021. The circuit breaker impact is estimated to be about 0.56% of the levy. The overall tax impact will be between 1.32% and 2.07% throughout the Territory, with homestead properties having the lowest burden. *Testimony of Brandon Scruggs; Proponents' Exhibit 1.*

ANALYSIS

30. In general, the Department does not inject itself into local affairs and therefore is hesitant to not second guess a policy decision of local elected officials, especially one in which those officials have sought professional third party consultation, and which has been properly adopted according to Indiana law.

31. The matter of the establishment of the Territory will not be handled in this Order. The Department already approved an initial maximum levy³ for the Territory on July 30, 2020, and does not have any reason to believe the Territory has not been properly established under IC 36-8-19.⁴

32. There are two issues that the Department can identify pertaining to this Fund. First, that the notice of the Fund was published prior to the vote on the Territory. Second, the Fund itself will create an economic burden.

³ In setting an initial maximum levy for a fire protection territory, the DLGF reviews whether the participating units complied with the notice and hearing requirements under IC 36-8-19-6.

⁴ Some of the Objectors argued against the formation of the Territory, including claims of deception on the part of the participating unit officials toward the public. The Objectors also expressed concern about the lack of independent oversight of the Territory. *Objectors' Exhibit C.* Since these claims do not concern the establishment of the Fund but of the Territory itself, the Department will not consider them. The Department will say that the regulation of fire territories, from how they are established to any oversight of their affairs, is prescribed by the legislature. As the Fire Protection Territory Act (IC 36-8-19) does not allow a remonstrance by taxpayers, and the Department has already identified the Territory as having been formed under IC 36-8-19, the Department will not consider matters about the Territory's establishment further.

33. With respect to the notice issue, the Department believes this refers to the notice of adoption of the Fund's establishment. Indiana Code 6-1.1-41-3(e) states that "[i]f a political subdivision adopts a proposal to establish a Fund . . . at a public hearing held in accordance with this section, the political subdivision shall publish notice of adoption in accordance with IC 5-3-1-2(i)." This provision does not expressly state that the notice of adoption must be published after the vote took place. However, IC 5-3-1-2(i) states that, "[i]f the event is one about which notice is required to be published after the event, notice shall be published one (1) time within thirty (30) days after the date of the event."

34. Taking these two provisions together, a valid reading of the requirement is that the notice of adoption may be published on the same day but at a later point in time than the vote. However, the Department cannot find that the Territory committed a procedural error. For one, the Territory is not in control of either what time in the day that a newspaper publishes the notice or when a taxpayer actually reads it. For another, the purpose of the notice of adoption is to inform the taxpayers not only of the action the Territory took, but also of their right to object. The fact that taxpayers successfully filed a remonstrance against the Fund demonstrates that the notice of adoption served its purpose, even if the notice was filed on the same day but before the vote was actually taken. Moreover, the Objectors claim that publishing the notice before the vote "prov[es] once again their intentions all along of passing the proposed Fire Territory regardless of the public's outcry." *Objectors' Exhibit C*. The claim was not necessarily that the Territory violated the law, but that the participating units made up their minds before the public hearing. That is a matter of the local public's trust in their elected officials and must be addressed through the election process. Indeed, even if the notice of adoption was published the day after the vote, the participating units could have still had their minds made up before the public hearing. For these reasons, the Department declines to consider the issue of the timing of the public hearing and the notice of adoption, as well as the ancillary claim about the lack of concern from the participating units about some of the public's disagreement about the Territory.

35. The other claim of the Objectors is that the additional tax from the Fund will impose a burden on the residents in the Territory, especially during the current pandemic which led to an economic downturn and, consequently, a reduction of income for taxpayers. The Territory points to various needs for the Fund, such as replacing equipment and renovating firehouses to accommodate full-time staff. The Territory also states that the overall tax impact for residents in the Territory will be around 1% and 2%, with the Town of Grabill residents having the lowest impact due to the property tax caps.

36. Weighing the Objectors' claims against those of the Territory, the Department determines that the Territory has justified its establishment of the Fund. Specifically, the Territory provided examples of needed equipment, including aging apparatus and fire stations, bunker gear, and radios. In addition, the testimony from the Territory indicated that there is no interest to take on debt because of the fact that the Territory would have to pay interest on it, which would be passed on to the taxpayers. This shows that, whatever

can be said of the potential burden on taxpayers, the Territory does not want to tax more than what it believes necessary to replace or renovate equipment and housing.

37. The Objectors also refute the need for the Fund based on a neighboring township allegedly not needing the Territory to make service runs within the township's boundaries, thereby lowering the service runs the Territory will need to make in the future. The Objectors did not corroborate this claim with evidence, but the argument to be inferred from is that if this will in fact be the case, the need to replace equipment is not so imperative as to require the Fund.

38. As mentioned previously, the Department defers to the decisions of local elected officials. As the participating units voted to establish the Fund, it is clear they determined there is a need for the Fund, however many service runs will actually take place. Also, that the Territory will not be making service runs to a neighboring township will not mean that there will not be a decrease of service runs, especially if other agreements are made with adjoining areas.

CONCLUSION

39. In sum, after weighing the testimony and evidence, the Department is not persuaded by the Objectors and concludes that there is no legal basis for denying the Territory's proposed Fund establishment. These objections notwithstanding, the adoption of the Fund was properly and lawfully done.

40. Consequently, the Department hereby **APPROVES** the Territory's proposed Fund establishment. The Department approves the levying of a tax in the amount of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100.00) of assessed valuation for 2020 and thereafter until the rate is reduced or rescinded, subject to existing maximum levy limits under IC 6-1.1-18.5-3. To obtain the rate, the Territory must advertise and adopt the rate and the appropriate levy amount as part of its 2021 budget in compliance with the provisions of IC 6-1.1-17-3. Fund dollars may only be used for those purposes outlined in IC 36-8-19. Any levy previously established for this purpose is hereby rescinded.

41. The Department notes that it is exempt from the Administrative Orders and Procedures Act (IC 4-21.5-2-4).

Dated this 24th day of September, 2020.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett
Wesley R. Bennett, Commissioner