

**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 RE-ESTABLISHMENT OF A CUMULATIVE ) OBJ 19-003 &  
FIREFIGHTING BUILDING AND EQUIPMENT FUND ) 19-004  
AND OF THE TAKING OUT OF A FIRE LOAN )  
BY MADISON TOWNSHIP, MORGAN COUNTY )**

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**FINAL DETERMINATION**

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This is an Order of the Department of Local Government Finance (“Department”) consolidating two final determinations on separate petitions regarding the above captioned matters. The 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 a township to establish or re-establish a cumulative firefighting building and equipment fund (“Fund”) to provide money for any purposes recognized by IC 36-8-14. Ten or more taxpayers may object to a township’s proposed Fund establishment. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund.
2. Indiana law also allows a township to seek a loan for the purchase of firefighting apparatus and equipment (“Loan”) that can be paid for with a property tax levy pursuant to IC 36-8-13-6. Ten or more taxpayers may object to a township’s proposed Loan. After a hearing on the objection and consideration of the evidence, the Department approves or denies the proposed Loan.
3. This Order is a response to a petition filed by at least 10 taxpayers within Madison Township, Morgan County (“Township”) objecting to the tax rate for the Township’s proposed Fund, which is one type of cumulative fund governed by IC 6-1.1-41, and to the Township’s proposed Loan.
4. Since at least 10 taxpayers in the Township filed a petition objecting to the re-establishment of the Fund, and to the taking out of the Loan, the Department was required to conduct a public hearing on the taxpayers’ objection petitions.

5. For the reasons stated below, the Department approves the Township's proposed Fund re-establishment and approves the Township's proposed Loan.

### RELEVANT PROCEDURAL HISTORY

6. The township board and trustee may, on behalf of the township, borrow the necessary money from a financial institution in Indiana for the purchase of firefighting apparatus and equipment, including housing. IC 36-8-13-5; 6.

7. The negotiable note or bond executed by the township board and trustee must be payable in equal or approximately equal biannual installments over a period not exceeding six (6) years. The township must appropriate and levy a property tax each year sufficient to pay the obligation according to its terms subject to Indiana law. IC 36-8-13-6.

8. A petition may be filed by at least ten (10) taxpayers in the township who disagree with the determination to borrow for the purchase of firefighting apparatus and equipment. The petition must be filed with the county auditor no later than thirty (30) days after publication of the township's notice of determination. IC 36-8-13-6.5(a).

9. On January 30, 2019, the Township published a Notice of Public Hearing on the proposed Loan in the *Mooresville Times* and the *Martinsville Reporter*. *Mooresville Times Publisher's Affidavit, January 30, 2019; Martinsville Reporter Publisher's Affidavit, January 30, 2019.*

10. In the Notice of Public Hearing, the District described the proposed Loan as "indebtedness in an amount not to exceed \$870,000.00 for the purchase of firefighting apparatus and an ambulance and equipment for the same pursuant to IC 36-8-13-6." *Notice of Public Hearing on Proposed Loan, Martinsville Reporter. Mooresville Times Publisher's Affidavit, January 30, 2019; Martinsville Reporter Publisher's Affidavit, January 30, 2019.*

11. A public hearing was held on February 12, 2019, as advertised in the Notice of Public Hearing. *Notice of Public Hearing on Proposed Loan, Martinsville Reporter. Mooresville Times Publisher's Affidavit, January 30, 2019; Martinsville Reporter Publisher's Affidavit, January 30, 2019.*

12. The Township Board ("Board") adopted the resolution authorizing the Loan on February 12, 2019. The resolution stated that the Board "finds that a need exists to incur a loan in the amount not to exceed \$870,000 for the purchase of a firefighting apparatus and ambulance and equipment for the same pursuant to IC 36-8-13-6," that the Loan will be levied outside the maximum permissible levy limits for a period of six (6) years, starting with taxes payable in 2020. *Resolution of the Township Board of Madison Township, Morgan County, on the Proposed Loan, February 12, 2019.*

13. On February 16, 2019, the Township published a Notice of Determination on the proposed Loan in the *Mooreville Times* and the *Martinsville Reporter*. *Mooreville Times Publisher's Affidavit on Proposed Loan, February 18, 2019; Martinsville Reporter Publisher's Affidavit on Proposed Loan, February 18, 2019.*

14. An objection petition containing an excess of ten (10) total signatures was timely filed with the County Auditor on March 13, 2019, and was duly certified to the Department on March 31, 2019. The Department must therefore hold a hearing no earlier than five (5) days and no later than thirty (30) days after it receives the certification. IC 36-8-13-6.5. *Objection Petition on Proposed Loan; Certificate of Auditor.*

15. The legislative body of a township may establish or re-establish a Fund under IC 6-1.1-41 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. IC 36-8-14-2.

16. To provide for the Fund, a county fiscal body may levy a tax on all taxable property within the county in compliance with IC 6-1.1-41. The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year is \$0.0333. IC 36-8-14-4(b).

17. 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.

IC 6-1.1-41-2.

18. At least ten (10) taxpayers may object to a fire protection territory's proposed Fund re-establishment. IC 6-1.1-41-6(1).

19. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund re-establishment. IC 6-1.1-41-9.

20. Notice of the Township's proposal to re-establish its Fund was given to the affected taxpayers in the *Mooreville Times* and *Martinsville Reporter* on January 30 and February 6, 2019. *Mooreville Times Publisher's Affidavit, February 6, 2019; Martinsville Reporter Publisher's Affidavit, February 6, 2019.* IC 6-1.1-41-3(a).

21. On February 12, 2019, the Township held a public hearing and adopted a resolution re-establishing the proposed Fund at a rate of \$0.0333. *Notice to Taxpayers on the Proposed Fund; Resolution Establishing Cumulative Firefighting Building and Equipment Fund; Mooreville Times Publisher's Affidavit, February 6, 2019; Martinsville Reporter Publisher's Affidavit, February 6, 2019.* IC 6-1.1-41-3(a), (e).

22. On February 16, 2019, the Township published a Notice of Adoption in the *Mooreville Times* and the *Martinsville Reporter*. Publication of this Notice triggered a 30-day remonstrance period. *Mooreville Times Publisher's Affidavit on Proposed Loan, February 18, 2019; Martinsville Reporter Publisher's Affidavit on Proposed Loan, February 18, 2019.* IC 6-1.1-41-3(e).

23. A petition was filed by at least 10 qualified taxpayers objecting to the proposed Fund establishment. The objection petition was timely filed with the county auditor on March 13, 2019, and duly certified to the Department on March 31, 2019. *Objection Petition on Proposed Fund; Certificate of Auditor.* IC 6-1.1-41-6(4).

24. For both the proposed Loan and the proposed Fund, the following objections were described in the Petition:

1. The Township's expenditure is already the 27<sup>th</sup> highest in the state on a per capita basis and any further increase to debt will inhibit economic development and increases to the tax base.
2. The Township has the highest expenditure on a per capita basis of any township in the state.
3. Any increase in debt will increase the tax rate and prevent the tax rate from being lowered in the future.
4. Significant conflicts of interest exist with a member of the Township Board.

*Objectors' Petition on Proposed Loan; Objectors' Petition on Proposed Fund.*

25. The Department set the date for a public hearing on the objection petition for April 26, 2019, and mailed notice of the hearing to the county auditor and the first ten taxpayers whose names appeared on both of the petitions. *Notice of Hearing to County Auditor on Proposed Loan; Notice of Hearing to Taxpayer on Proposed Loan; Notice of Hearing to County Auditor on Proposed Lease; Notice of Hearing to Taxpayer on Proposed Lease.* IC 6-1.1-41-7, 8; IC 36-8-13-6.5.

26. The Department conducted a public hearing on April 26, 2019, at the Madison Township Fire Station 32, 7047 E Landersdale Road, Camby, Indiana, at 9:00 a.m. local time. David Marusarz, Deputy General Counsel for the Department, conducted the public hearing.<sup>1</sup> *Department's Notice of Hearing to County Auditor; Notice of Hearing to Taxpayer on Proposed Loan; Notice of Hearing to Taxpayer on Proposed Lease.* IC 6-1.1-41-7.

27. At the hearing, following then testified as Proponents:

Stephen Buschmann, attorney for the Township  
Louis Lang, fire chief, Township fire department  
Nichole Franklin, financial advisor for the Township  
Kelly Alcala, Township resident  
Thomas Buckrop, Township resident

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<sup>1</sup> The hearing was audio recorded by the hearing officer. The recording is available at the Department's Indianapolis office for inspection and copy.

Amy Russell, Township Board Chair  
Scott McDonough, Township Trustee  
Denise McClure, Township resident  
Dale Depay, Township resident  
Melanie Depay, Township resident  
Joseph Jordan, Township resident

The following then testified as Objectors:

Trudy Ellis, Township resident  
Rick Harrison, Township resident  
Greg Terhune, Township resident  
Kenneth Wilson, Township resident

28. Objectors presented the following exhibits, which are thus part of the Record:
- Objector Exhibit A: Written Testimony of Larry Ellis.
  - Objector Exhibit B: Written Testimony of Trudy Ellis and Fiscal Impact Analysis
  - Objector Exhibit C: Written Testimony and Fiscal Analysis for Gregory Terhune.
  - Objector Exhibit D: E-mail from Judy Haney to David Marusarz, Deputy General Counsel of Department, May 9, 2019, 1:12 p.m.
  - Objector Exhibit E: E-mail from Trudy Ellis to David Marusarz, Deputy General Counsel of Department, May 9, 2019, 1:46 p.m., with attachments.
  - Objector Exhibit F: E-mail from Gregory Terhune to David Marusarz, Deputy General Counsel of Department, May 9, 2019, 11:29 p.m., with attachments.

29. Proponents presented the following exhibits, which are thus part of the Record:
- Proponent Exhibit 1: Relevant Statutes for Conflict of Interest, Nepotism, and Public Purchasing Laws.
  - Proponent Exhibit 2: Capital Improvement Plan for Township.
  - Proponent Exhibit 3: Fiscal Impact Analysis.
  - Proponent Exhibit 4: Written Testimony of Kelly and Juan Alcala.
  - Proponent Exhibit 5: Maintenance Report for Township.

30. The Department recognizes the following items as part of the Record: (1) the Hearing Procedures Script; (2) the Hearing Record of Evidence; (3) a digital recording of the hearing; and (4) the hearing sign-in sheets. Throughout this Order, any reference to a particular individual's testimony will also be a reference to the digital recording of the hearing.

## **SUMMARY OF THE PARTIES' CONTENTIONS**

### **A. Summary of Proponents' Contentions**

31. Stephen Buschmann, attorney for the Township, started by stating that the township is one of the largest in the county, but is also unique in that it does not have a municipality. He said the township has had to incur loans to acquire equipment. He also said that the County imposes a \$0.12 rate for everyone for its countywide ambulance service but excludes the Township. Regarding the legal issues, he first said that a firefighter's wife

serving on the Township board is not a conflict of interest as defined in law; IC 35-44.1-1-4<sup>2</sup> defines it as involving a pecuniary interest in the decision of more than \$250, and that this can be remedied by disclosure. He also said that this does not involve the anti-nepotism law (IC 36-1-20.2<sup>3</sup>) because there is no promotion, nor IC 3-5-9<sup>4</sup> which prohibits a full-time government employee or volunteer firefighter from holding office, nor IC 36-1-23<sup>5</sup> because that only prohibits voting on a unit budget, nor IC 36-1-21<sup>6</sup> because it is not related to a borrowing under IC 36-8-13-6. Mr. Buschmann stated as a recourse for a conflict of interest, the law requires the individual to vacate the position. *Testimony of Stephen Buschmann; Proponents' Exhibit 1.*

32. Louis Lang, Township Fire Department Chief, stated that the Township developed a capital improvement plan in 2012. This plan was last updated in 2015, and the Township also established a cumulative fire fund for it. He said the fire department currently has 2 ambulances, one from 2006 and one in 2009, and that replacing or refurbishing these is the biggest need for the Township. He added the primary ambulance requires \$50,000 a year in maintenance. He then said the leftover money from the fire fund would go to purchasing a new fire truck. Currently, the Township has two front line engines, one from 2008 and 2009, and several trucks including one acquired in 1997. He said the older truck still runs, but the Township has had to spend \$20,000 a year on repairs and putting it in reserve would cut maintenance costs. He said he has reached out to multiple vendors for project quotes, but all decisions will be made by the Township Board. He then said that the goal here is to maintain debt service levels where they are at and to spread out procurement of the apparatus to keep vehicles in a rotating capacity. He explained that \$870,000 is the exact money taken out in a 2013 loan; the last payment for that loan will be in July 2019. He said a new ambulance would be \$200,000, and a fire truck would be close to what's left. Mr. Lang also explained they have about 800 service runs yearly. Regarding the useful life of the vehicles, he said an ambulance lasts for 10 years, and a fire truck about 12-15 years. *Testimony of Louis Lang; Proponent Exhibits 1, 2, and 5.*

33. Regarding the proposed Fund, Mr. Lang testified that this cumulative fund is part of the Township's 2015 capital improvement plan. Specifically, this would be for the leasing of fire gear, exercise equipment, and physicals. He said these were previously paid for by grants which are now being used for water rescue. He said this includes about

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<sup>2</sup> IC 35-44.1-1-4 states that a public servant or a dependent of a public servant may not have a pecuniary interest or derive a profit from a contract with the governmental entity served by the public servant. There are multiple exceptions to this prohibition, including adequate disclosure of the interest in the contract. IC 35-44.1-1-4(c), (d).

<sup>3</sup> IC 36-1-20.2 generally provides that an individual employed by a unit may not be in the direct line of supervision of another employee who is a relative of that individual. "Direct line of supervision" is defined as the employee being "in a position to affect the terms and conditions of another individual's employment, including making decision about work assignments, compensation, grievances, advancement, or performance evaluations," but excludes an elected official's decisionmaking about budgets, ordinances, salaries, or personnel policies of the unit. IC 36-1.1-20.2-4.

<sup>4</sup> IC 3-5-9-4.

<sup>5</sup> IC 36-1-23-2.

<sup>6</sup> IC 36-1-21-5 states that a unit may not enter into a contract with an individual or business owned by an individual who is a relative of an elected official of that unit without adequate disclosure of that relationship.

\$200,000 for the station and apparatus, which he claimed came from the state QPA. He also mentioned replacing the computers on the apparatus, thermal imaging cameras, EMS heart monitors, automatic external defibrillator, and IT equipment, and potentially for capital costs such as hoses. He said the Fund is needed to maintain the estimated cost and that it has not been utilized fully for what it can be used for. He said that grant money is awarded based on a federal point system, and higher points and awards are given to the fire departments that exhaust all other available resources, first. Finally, he said that the Township cannot operate with the current equipment, and that the Fund will be used to help phase out reliance on lease purchases for equipment. *Testimony of Louis Lang; Proponent Exhibits 1, 2, and 5.*

34. Nichole Franklin, financial advisor for the Township, began by stating that the estimated tax impact for the Loan is a rate increase of \$0.0205, which would be a \$9 tax increase for a \$150,000 mortgaged homestead. She then said that EMS that is provided by the county will not appear as a tax impact. Finally, she said that the median tax rate for a township in Indiana is higher than what's proposed, here. Regarding the Fund, Ms. Franklin stated that the current rate is \$0.0141, and that the impact of the re-establishment is \$2 on \$150,000 mortgage homestead. This impact, she claimed, is near the median in terms of the whole County. *Testimony of Nichole Franklin.*

35. Kelly Alcala, Township resident, stated that the Township is unique because it has a larger population, and that fire and EMS services are needed. She provided a written statement, which was entered into evidence. She also gave a letter written by herself and Juan Alcala. Mr. & Mrs. Alcala stated they support the Loan and the Fund because of the unique situation the Township has being without a municipality, but that because it borders Marion County "many residents including ourselves expect to find the same services with Fire and EMS that you would find in Marion County," including quick response times. *Testimony of Kelly Alcala; Proponent's Exhibit 4.*

36. Thomas Buckrop expressed his support for the Loan and the Fund. *Testimony of Thomas Buckrop.*

37. Amy Russell, Township Board Chair, stated that the Loan and the Fund will help the fire department get better equipment and service. She said the Township board voted in favor. *Testimony of Amy Russell.*

38. Denise McClure stated that she supports the Loan and the Fund because she was a victim of a house fire and supports better service. *Testimony of Denise McClure.*

39. Scott McDonough, Township Trustee, expressed his support for the Loan and the Fund. *Testimony of Scott McDonough.*

40. Dale Depay stated that he was neutral on the Loan. He said that the fire department has a plan and is trying to keep the tax impact low. He said he would like there to be a municipality in the Township. He said the rate the Township is proposing is reasonable. Finally, he said that he had recently needed ambulance services. He also stated he favored

the Fund as it will be used to phase out lease purchases that the Township has had to depend on. Mr. Depay stated he supports the Fund because the Township needs to depend less on lease purchases to make ends meet. *Testimony of Dale Depay.*

41. Melanie Depay stated that the fire department is following a plan and supports the Loan so they can continue that plan. She also said there seems to be a lot of maintenance costs. She also stated that there is a vocal minority speaking in opposition of the Fund. *Testimony of Melanie Depay.*

42. Joseph Jordan expressed support for the Loan and the Fund. He said he started as a volunteer in 2008 and that he believes the fire department has worked hard to keep the tax rate low. *Testimony of Joseph Jordan.*

43. Ms. Franklin also provided a draft of a fiscal impact report. This report purports the following, among other things:

- The Loan would increase the Township tax rate by \$0.0205 while the Fund would increase by \$0.0192. Hence, added to the current Township tax rate of \$0.1962, the proposed 2020 overall tax rate with the Loan and the Fund rates would be \$0.2359.
- A 10-year trend in the Townships tax rates for the fire equipment debt tax rate remains relatively steady over the 6-year life of the loan, with a lower rate in the last year of the loan and a higher rate in the first year.
- The 2020 tax liability for a \$150,000 homestead property with a mortgage deduction with the proposed Loan and Fund in place would be 10th lowest compared to the 2019 tax liabilities of the same property in 23 other jurisdictions in the County.
- Finally, it compares the impact of the current tax liability for a \$150,000 homestead to what it would be if the Township was under the county ambulance service.

*Proponents' Exhibit 3.*

## **B. Summary of Objectors' Contentions**

44. Trudy Ellis, Township resident, began by reciting written remarks from Larry Ellis, as follows: The majority of the tax base in the Township is residential, and there is no large taxpayer in the Township. The purported maintenance costs have been inflated and could have been avoided. The Township must live within their budget as the resident taxpayers always have to. The maintenance costs of \$1,500 were avoidable costs. Based on invoices obtained from the fire department, there is a lot of wasteful spending, such as for fitness equipment, scuba gear, rock salt from Lowes, a gear box and exhaust pipe. *Testimony of Trudy Ellis; Objectors' Exhibit A.*

45. Mrs. Ellis then provided her own remarks, as follows: The Township currently has the 4th highest tax rate and the 28th highest budget of all townships in the state. There are sufficient needs, but the problem is mismanagement of funds, saying the 2017 budget was around \$225,000 but is now much higher. After doing an analysis of personnel costs,



the Township is twenty-three times higher than other townships. As it is now, the fire department cannot operate effectively. She claimed several taxpayers told her about the frivolous use of vehicles by the fire department, and that Scott McDonough told her there is no need to sell one of the ambulances. The cumulative fire fund can be used for equipment in lieu of the Loan. In 2018, the Township was overspending in township assistance. She said in 2018 there were 550 runs, or about 1.5 runs a day. There is enough money right now that there is no need for a loan. *Testimony of Trudy Ellis; Objectors' Exhibit B.*

46. Rick Harrison, Township resident, stated that he left the fire department in 2003. He said that the fire department wastes money, having 1 or 2 runs a year on the heavy equipment and that the new fire station is not needed. He added that the fire department has purchased what he described as a "\$1.5 million toy" that is not needed. He then said the Township does not have industry. He is against more spending and the Township should be frugal. Finally, he said that the Township needs to narrow down what kinds of fire trucks they plan to acquire. *Testimony of Rick Harrison.*

47. Gregory Terhune, Township resident, stated that the Township now has a good budget and they can manage it without a loan. He stated he has a background in economic development. He said the loan would burden the Township for years and would hinder economic development. He said that in his neighborhood a developer has been unable to sell lots, which he believes is due to the high tax rate. He then said the Township has an \$18 million tax base and no business support. He then provided data taken from the Indiana Gateway for Government Units website giving the last 7 years of data for the Township, to claim as follows: the Township is the biggest *per capita* spender in the County, one of the biggest spenders in the State; at \$52.02 per capita, it is the highest spender of all the townships, and this amount was even higher last year; it is trying to keep up with other Townships, keeping the tax rate high without growing the tax base; the AV has fallen to \$400 million in 2018. Therefore, he claimed, the loan is unnecessary. As for unwise, Mr. Terhune stated that one Township board member should have abstained from voting. Specific to the Fund, Mr. Terhune stated that the Fund is unnecessary because the Township already has a \$2 million budget when it does not have the best tax base. He added that the Township ranked 32 out of 1008 in spending per capita and has the biggest spending habit of the state. He reiterated that the Township lost \$76 million in AV over the years. Finally, he said the Township has not used the Fund as needed nor spent it as needed. *Testimony of Gregory Terhune; Objectors' Exhibit C.*

48. Kenneth Watson, Township resident, stated that the Township should take better care of equipment. He said that trucks are regularly used for personal & non-fire purposes, such as driving into Mooresville for lunch, and that they have even been involved in accidents. Finally, he stated that there is no need for a fire station and that the funds are mismanaged anyway. *Testimony of Kenneth Watson.*

49. After the hearing, the Department received by e-mail a written statement from Judy Haney. Ms. Haney stated that as of 2017 there were 9,776 residents and 12 licensed businesses in the Township. She then said that the purported equipment need is excessive

compared to other jurisdictions: for example, the Township is wanting 35 portable radios and 10 mobile radios when Danville and Monrovia have no more than 10 radios; fire gear should only be replaced when torn or dangerous; replacing vehicles every 12-15 years is unnecessary when there are so few runs in a year; and having department vehicles for many of the staff to use creates a liability for the fire department. Ms. Haney then said that the Township has alternatives for revenue such as fundraisers and corporate grants, as well as alternatives for having some of the repair work to the stations done. Finally, the Township does not have many commercial residents and so cannot afford what Wayne Township in Marion County, which has comparably more commercial residents is able to buy. Therefore, she said, the Department should not approve the Loan. *Objector Exhibit D.*

50. After the hearing, the Department received by e-mail a written statement from Trudy Ellis. Ms. Ellis stated that the Township has wasted funds that if otherwise used properly would not necessitate the Fund or a Loan. Ms. Ellis then provided two sheets. The first sheet is a comparison of the Township to other townships in Morgan County in 2017, 2018, and 2019 with regard to tax rates. In her statement, Ms. Ellis corrected her previous testimony by stating there is a part of the Township where the Town of Mooresville does tax. She contended that the Township still remains near the top of the county's overall township tax rates. She also stated that Mr. Lang and the clerk in Madison Township told her it would be expensive to be on the county ambulance service, to which she said in response that the Township would not be taxed nearly as much, and that with 186 fire calls a year the Township does not need a full time fire department. Ms. Ellis then said that the Township spent more in 2018 than it took in from its fire fund, whereas Green and Washington Townships, also in Morgan County, were able to incur savings that same year. She also described a loan taken out in early 2019 to acquire 40 sets of turnout gear as wasteful because there are only 26 employed firefighters. The second sheet Ms. Ellis provided listed a comparison of the Township to 10 other townships in the state concerning the following for 2018: township assistance, fire and EMS services, and township general fund personal and professional services. Ms. Ellis claimed that the Township's spending on personnel and professional services is one of the highest in the County, that township assistance has a higher administrative cost than what is actually given for need, and that firefighting and EMS costs is higher than in all but one of the other townships in the County. Ms. Ellis concluded by requesting the Department not to approve any additional taxes because the Township's management would continue to spend it unwisely. *Objector Exhibit E.*

51. After the hearing, the Department received an e-mail from Gregory Terhune. Mr. Terhune reiterated that the Township is "one of the biggest spenders on a 'per capita' basis," having a population of under 10,000 with a \$2 million budget. He reiterated that the Township commits wasteful spending while never trying to save money. He then gave examples of wasteful spending by the Township: driving the fire trucks out of the Township to go to lunch when they have "a very fine kitchen" in the station; buying 4 "fully decked out, specially painted SUVs" for use as take-home vehicles; and taking a fire truck on an ambulance run because, as he claimed was explained to him, "the person needing the ambulance might be too heavy for just two people to lift," which he said is

not common practice according to a colleague of his. Mr. Terhune concluded by saying if the Township gets the Loan “they will never feel the need to do better” and that the Loan and Fund re-establishment are unnecessary and unwise. *Objector Exhibit F*.

## ANALYSIS

52. The Objectors raise the same arguments as to why the Department should deny the Loan and the Fund. The Proponents of the Loan and the Fund do likewise for why the Department should approve them. To the extent possible, the Department will address the issues simultaneously. However, as there are separate petitions, the Department must resolve each petition separately.

### A. Standard for reviewing the proposed Loan, IC 36-8-13-6.5

53. Under IC 36-8-13-6.5(a), a petition must state the reasons why the objectors believe the Lease is unnecessary or unwise. The phrase “unnecessary or unwise” is left without further explanation in statute, therefore the phrase must be taken in its plain and ordinary meaning.<sup>7</sup> According to the Oxford American Dictionary, “unnecessary” means “not needed” or “more than is needed; excessive.” Similarly, “unwise” is defined as “not wise or sensible; foolish.”

54. The Department has authority to interpret the property tax laws of the state.<sup>8</sup> Indiana Code 36-8-13-6.5(a) allows for a petition against a loan payable in whole from property taxes. Hence, the Department must interpret and implement this statute, including the term “unnecessary or unwise.” However, providing a binding and definitive interpretation of statutes is a function ultimately left to the courts. Case law has demonstrated that this Department, under the name “State Board of Tax Commissioners,” has denied a petition upon a finding that payments under the terms of a proposed lease were reasonable, a finding which the courts have given deference.<sup>9</sup>

### B. Standard for reviewing the proposed Fund, IC 6-1.1-41

55. By contrast, Indiana law does not give a standard for how a cumulative fund that has been remonstrated against may be approved or denied. The Department has therefore looked principally to whether the unit failed to comply with one of the statutory requirements for establishing or re-establishing a cumulative fund. Absent that, the

<sup>7</sup> IC 1-1-4-1(1) states in part that in the construction of statutes in the Indiana Code “[w]ords and phrases shall be taken in their plain, ordinary, and usual sense.”

<sup>8</sup> IC 6-1.1-35-1(1). Most of the property tax laws are contained in IC 6-1.1, though there are other such laws throughout the Code.

<sup>9</sup> *Hall v. State Bd. of Tax Comm'rs*, 512 N.E.2d 891 (Tax Ct. 1987); see also *Dunn v. Carey*, 110 F.R.D. 439 (S.D. Ind. 1986) (stating the State Board determined the lease was “not unnecessary or unwise” in evaluating a Tax Injunction Act claim raised in federal court by the objectors). See, however, *St. Joseph Co. v. State Bd. of Tax Comm'rs*, 683 N.E.2d 1379 (Tax Ct. 1997) (stating that the State Tax Board determined a proposed jail project was “necessary, wise, cost efficient, reasonable in size, and designed to allow for cost-effective expansion in the future” but finding that the State Board abused its discretion by requiring a petition and remonstrance process under IC 6-1.1-20).

Department has been extremely reluctant to deny a fund for, as a general practice, the Department does not inject itself into local affairs, especially as they concern matters of policy.

### **C. Conflict of Interest Claim**

56. To be sure, the Objectors have argued that the Township erroneously adopted both the Loan and the Fund because one of the Township Boardmembers had a conflict of interest at the time the resolutions were adopted. *Objectors Petition on Proposed Loan; Objectors Petition on Proposed Fund*. This claim raises a question of whether the Township Board performed a legal action when adopting its resolutions. Therefore, it is worth discussing.

57. Specifically, the Objectors allege that one of the Township Boardmembers is married to one of the firefighters employed by the fire department. None of the Objectors identified who was the Boardmember or who was the spouse. Even if there was a conflict of interest, it is unclear how that would nullify the Board's actions. A simpler and more likely remedy is that a boardmember with a conflict would simply abstain from voting. The Department notes that the vote on the resolution to approve taking out the Loan was 3-0. *Resolution of the Township Board of Madison Township, Morgan County, on the Proposed Loan, February 12, 2019*. If the Boardmember with the purported conflict abstained from voting, the resolution on the Loan would have still passed 2-0. The resolution on the Fund, however, was by a vote of 2-1. *Resolution Establishing Cumulative Firefighting Building and Equipment Fund*. Assuming the Boardmember with the purported conflict had abstained and was not the lone no-vote, the resolution would not have passed because the vote would have been 1-1. Therefore, the claim of a conflict of interest would have more impact on the outcome of the Fund than on the Loan.

58. With respect to the Loan, the Objectors' claim that the conflict of interest makes the Loan unwise. *Testimony of Gregory Terhune*. As stated above, even if there was a conflict, the resolution would have still passed with a 2-0 vote. The Objectors have not provided any evidence that the Boardmember's spouse employed by the fire department unduly influenced the other Boardmembers to vote in favor of the resolution.

59. In response to the conflict of interest claim, the Proponents argue that there is no conflict as defined by law. The Department does not dispute this. The Objectors merely asserted that there was a conflict of interest without really substantiating their claim. Moreover, the statutes the Proponents reference in their arguments do not grant any remedy the Department can give favoring the Objectors in either the Loan or Fund petition.<sup>10</sup> The Department acknowledges a Boardmember voting on the Loan and the

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<sup>10</sup> IC 35-44.1-1-4 is a criminal statute, and the Department has no authority under law to prosecute crimes. The Department is prohibited from certifying a unit's budget or additional appropriation if it fails to adopt an anti-nepotism policy pursuant to IC 36-1.20.2 or fails to disclose a contract with a relative of an elected official under IC 36-1-21. This remedy, moreover, is triggered by notice from the State Board of Accounts, which as of the date of this Order has not happened. IC 36-1-23 implies the Department may not certify a

Fund having a spouse employed by the fire department has an appearance of impropriety. That does not necessarily arise to the level of a conflict of interest under the law.

60. For the above reasons, the Department dismisses the claim of a conflict of interest.

#### **D. Township Expenditures**

61. Another contention of the Objectors is that the Township is engaged in what they see as wasteful spending and mismanagement of current equipment. They allege that if the Township did not spend so much on other things, they would need neither the Loan nor the increase in the Fund rate. Some also alleged that approving the Loan or the Fund would enable them to continue their wasteful spending. *Objectors' Exhibits D & E.*

62. It is difficult to quantify wasteful spending. Townships and their fire departments, as with any unit of government, are stewards of the money they receive from the taxpayers and ought to be mindful of that in light of their immediate and long term needs. What makes spending wasteful, however, is subjective: the Township does not see itself as wasting money, while the Objectors see wastefulness both in past spending and what the Township plans to spend on in the future.

63. The Township has been operating on a capital improvement plan since 2007. The initial plan was to incur debt to replace apparatus under IC 36-8-13-6. This debt would be replaced by new debt to continue the plan while maintaining a steady tax rate. The Loan is the second instance of this happening. *Proponents' Exhibit 1.* The plan itself is prima facie evidence of a necessity for the Loan. The Township fire chief testified that federal grants are easier to obtain once all other available revenue sources are used. *Testimony of Louis Lang.* As such, the Township cannot necessarily rely on federal grants to acquire the equipment under the plan.

64. In all, the Department will not put itself in the position of deciding whether the Township's past, present, and expected spending is wasteful. As for the alleged inappropriate use of fire trucks, that is a management issue. It is not the role of the Department to micromanage how township fire departments are to use their equipment. It is also irrelevant to whether the Loan is unnecessary or unwise. The Objectors allege, to the contrary, that, as with alleged wasteful spending, it shows that the Township would not need the Loan if it took care of their equipment better. Equipment breaks down over time and needs replacing. It would be one thing if the fire department was always or almost always using the vehicles for frolic and detours.<sup>11</sup> Testimony among the Objectors and Proponents showed there were actual service runs done, though there was disagreement as to the amount per year. Whatever it was 550 or 800 annual service runs, using the vehicles for emergencies would take a toll on the vehicles and contribute to them needing repairs, maintenance, and eventual replacement.

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budget unless the county council approves the unit's budget, first. IC 3-5-9 does not even mention the Department at all.

<sup>11</sup> To be sure, the Department does not condone the use of emergency vehicles for non-emergency errands.

65. The Loan amount is intended to keep the tax rate steady while generating enough revenue to maintain a reserve for the Township for expected costs. Given that the fire equipment must be maintained or replaced on a regular basis, and that the Loan is pursuant to a plan that is kept up to date in light of the fire department's needs, a reserve that also keeps the tax rate near a level the taxpayers have recently seen appears reasonable. This is especially in light of the planned phase out of the lease-purchase for the larger equipment in lieu of the Fund.

66. Both the Objectors and the Proponents acknowledge that the Township is in a "unique situation." While it is not the only township without a municipality, it is particular in that it is one located near Indianapolis and therefore has grown more suburban overtime. It is true that the Township has one of the highest per capita expenditures among townships. This seems to be characteristic of townships that maintain their own fire departments, though one must also account for township assistance and other non-fire expenses, and especially ones near urban centers.<sup>12</sup> Moreover, the Township had a fiscal analysis done purporting that the tax impact of the countywide ambulance service extending into its area would be greater than if it just provided the service, itself. *Proponents' Exhibit 3*. This fiscal analysis was not disputed by the Objectors. Given the circumstances the Township is in and the options before it, it is not unreasonable for the Township to propose the course of action it has to meet its purported needs.

#### **E. Hindrance to economic development claim**

67. The Objectors also argue that increases in the tax rate would hinder economic development. They have not provided evidence supporting this contention. The Department acknowledges the concern that the Township needs more commercial investments, but the Objectors' claim appears to be merely presupposed rather than demonstrated.<sup>13</sup>

#### **F. Claim that the tax rate will not be lowered**

68. The Objection petition also stated that an increase in the tax rate will prevent the tax rate from being lowered in the future. It is unclear if by 'tax rate' the Objectors mean the overall Township tax rate or just the tax rate related to debt and the Fund. But it is only speculation that the overall tax rate will never be lowered. The tax rate for the Loan is need-based and would require the rate necessary for the Township to make its annual payments. The Objectors have not explained how either the tax increases for the Loan or

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<sup>12</sup> Gateway Township Expenditures Per Capita Report for 2018, Indiana Gateway for Government Units. In 2018, the Township had a \$193.03 non-enterprise expenditure per capita, 31st of all townships. Neighboring Decatur Township in Marion County is ranked 10th with \$354.64. Interestingly, Brown Township in Morgan County, to the immediate west of the Township, is serviced by the Town of Mooresville and has a per capita expenditure of \$173.00, 39th overall.

<sup>13</sup> Moreover, the Department can anticipate a counterpoint to this argument. Namely, that improvements to fire and emergency services incentivizes potential businesses to move into the Township. Admittedly, none of the Proponents argued that, but it is conceivable that businesses take that into account in making their decisions about where to locate.

the Fund would not also mean that tax rates would not be lowered in any of the other Township funds. Moreover, the imposition of taxes is a political decision. If the Township residents are unsatisfied with their local elected officials' taxation decisions, they can vote them out of office.

#### **G. Proposed Loan is neither unnecessary nor unwise**

69. For the above reasons, the Department does not believe that the Loan is unnecessary or unwise. The Township developed a capital improvement plan and claims to have been following it. To ensure this happens, it has been taking out a loan under IC 36-8-13-6 on a 6-year cycle since 2007. This plan includes the regular replacement of vehicles and equipment, which entails the regular raising of revenue for acquisition. The tax levy pursuant to IC 36-8-13-6(b) is claimed to be at a level that both generates revenue needed to fulfill the plan while also keeping the tax rate near the level it has been at since at least 2010.

70. The Department rejects the claim that the Loan is unwise because there was a purported conflict of interest. The Objectors did not substantiate their claim that there was a conflict of interest, and the Proponents adequately responded that there was no conflict of interest as defined by several state laws.

#### **H. Proposed Fund may be re-established**

71. The Department's disposition of the conflict of interest claim also applies to the Fund. No other evidence has been provided that the Township made any other procedural defects when passing the resolution to re-establish the Fund.

72. As previously mentioned, the Department does not inject itself into local affairs and therefore is hesitant to override the policy decisions of popularly elected officials. The Department in this case does not see a sufficient reason to depart from that practice. The Objectors have not pointed to any purpose not permitted by statute that the Township intends to use for the Fund. The Department does not deny that individuals may disagree as to the appropriateness of the purposes for which the Fund's revenue may be used or the necessity of the projects that may be funded from the Fund. These differing opinions notwithstanding, the adoption of the Fund was properly and lawfully done.

73. According to the Township's capital improvement plan, the Township claims the Fund "is not utilized to the benefit that it possibly could be," using instead lease-purchase agreements. These agreements constitute a debt that is not exempt from the maximum levy under IC 6-1.1-18.5-3. While the Fund is also exempt from the maximum levy, it is rate controlled under state law, whereas a debt service rate for the lease-purchase is not. As the lease-purchases are phased out, the taxpayers would not be on the hook for interest payments that would otherwise be paid for out of a debt service tax rate and levy. The

Department sees no need to question the Township's judgment in how it is levying for its fire equipment, including raising the tax rate for the Fund.<sup>14</sup>

### CONCLUSION

74. 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 Township's proposed Loan or Fund re-establishment.

75. Consequently, the Department hereby **APPROVES** the Township's proposed Fund re-establishment.

76. The Department approves the levying of a tax for the Fund in the amount of three and thirty-three hundredths cents (\$0.0333) per one hundred dollars (\$100) of assessed valuation for 2019 and thereafter until the rate is reduced or rescinded, subject to existing maximum levy limits under IC 6-1.1-18.5-3. Any levy previously established for this purpose is hereby rescinded.

77. The Department also **APPROVES** the Township's proposed Loan.

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

Dated this 18th day of June, 2019.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

  
Wesley R. Bennett, Commissioner

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<sup>14</sup> One of the Objectors claimed that the Township can do fundraising as an alternative to levying additional taxes. That is an option and the Department would not discourage that, but it also questions whether fundraising can generate the same amount of revenue, given that it is dependent on taxpayers volunteering their money in a way they would not do with a tax levy.