

**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 EXECUTION OF A LEASE BY THE) OBJ 23-002
ALLEN COUNTY UNDER IC 36-1-10)**

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 a political subdivision to acquire structures, transportation projects, or systems by lease or lease-purchase (“Lease”). Ind. Code § 36-1-10-1. Ten (10) or more taxpayers in the political subdivision may object to the execution of a Lease. After a hearing on the objection and consideration of the evidence, the Department approves or disapproves the petition.
2. This Order is a response to a petition filed by at least ten taxpayers (“Petition”) within Allen County (“County”) objecting to the execution of the Lease. The Petition was certified to the Department by the county auditor pursuant to Ind. Code § 36-1-10-14(b). The Lease is between the County as lessee and Allen County Building Corporation (“Corporation”) as lessor for the construction of a new jail (“new jail” or “project”) to be located within the County limits.
3. Due to the certification of the petition by the County auditor, the Department was required to conduct a public hearing on the taxpayers’ objection Petition and render a decision. A decision on the Petition by the Department is final.
4. For the reasons stated below, the Department denies the Petition against the Lease.

RELEVANT PROCEDURAL HISTORY

5. Any of the following persons may lease property to a political subdivision or agency using a lease or lease-purchase:
 - (1) A profit or non-profit corporation organized under Indiana law or admitted to do business in Indiana.
 - (2) A partnership, association, limited liability company, or firm.
 - (3) An individual.

Ind. Code § 36-1-10-3.

6. A political subdivision may not enter into a lease for a period of more than fifty (50) years. Ind. Code § 36-1-10-6.

7. For a lease with an annual cost of at least two hundred fifty thousand dollars (\$250,000), a non-school political subdivision may not lease a structure, transportation project, or system unless the political subdivision receives a petition signed by fifty (50) or more taxpayers of the political subdivision; and the fiscal body of the political subdivision determines, after investigation, that the structure, transportation project, or system is needed. Ind. Code § 36-1-10-7.

8. The political subdivision and the lessor must, prior to the execution of a lease, hold a public hearing and provide notice of the hearing at least ten (10) days in advance. The notice of public hearing must state the date, place, and hour of the hearing, and provide a summary of the principal terms of the lease. The notice must also contain the name of the proposed lessor, the location and character of the structure, transportation project, or system to be leased, the rental to be paid and the number of years the lease is to be in effect. In addition, the proposed lease, drawings, plans, specifications, and estimates for the structure, must be open for public inspection at the hearing and for the ten days preceding the hearing. At the hearing, the public may express opinions as to whether the execution of the lease is necessary and whether the rental is fair and reasonable for the proposed structure. The political subdivision may modify, confirm, or rescind the proposed lease, but may not increase the rental as advertised in the notice. If the execution of the lease is authorized, whether in its original form or modified, the political subdivision must provide notice of the execution within thirty (30) days in accordance with Ind. Code § 5-3-1. Ind. Code § 36-1-10-13.

9. Subject to certain limitations and procedures, a political subdivision that executes a lease may make an annual appropriation and levy property taxes sufficient to pay the rental stipulated in the lease. Ind. Code § 36-1-10-17.

10. On December 15, 2023, the Allen County Auditor certified that at least 10 real property owners in the County petitioned against the County to the execution of a lease between the County and Corporation. The certification represented the lease was executed on December 1, 2023. *County Exhibit 24*; Ind. Code § 36-1-10-14.

11. On November 21, 2023, the County published a Notice of Public Hearing on the proposed Lease in the *Journal Gazette*. *County Exhibit 19*; Ind. Code § 36-1-10-13(a).

12. In the Notice of Public Hearing, the County described the proposed Lease as follows: “the financing of the acquisition by the Corporation of the existing Allen County Courthouse . . . and the financing of the acquisition, construction, improvement, and/or equipping of all or any portion of a new county jail facility to be located at 3003 Meyer Road, Fort Wayne, Indiana” and will have a term no longer than twenty (20) years and an annual lease rental not to exceed twenty-two million two hundred twenty thousand dollars (\$22,220,000). The Notice states that the County shall pay such lease rentals solely from (1) the adjusted gross income tax imposed pursuant to Ind. Code § 6-3.6-6-2.7 (“jail LIT”)¹; (2)

¹ The County adopted a jail LIT rate by ordinance on October 26, 2023. *County Exhibit 9*.

legally available revenues appropriated for such purposes including, but not limited to, the economic development component of the local income tax (“EDIT”); and (3) an ad valorem tax levied on all property in the County, if revenues from the jail LIT or EDIT are insufficient. Finally, the Notice states that the County reasonably expects all lease rentals to be paid from the jail LIT and legally available revenues, and not paid from a property tax. *County Exhibit 19*; Notice of Public Hearing.

13. The Allen County Board of Commissioners (“Board”) adopted a resolution authorizing the Lease on December 1, 2023. *County Exhibit 20*.

14. The Lease was executed, dated as of December 1, 2023. *County Exhibit 21*.

15. On December 6, 2023, the County published a Notice of Execution of the Lease in the *Journal Gazette*. *County Exhibit 22*; Ind. Code § 36-1-10-13(e).

16. An objection petition containing an excess of ten (10) total signatures was timely filed with the County Auditor and was duly certified to the Department on December 15, 2023. *County Exhibit 24*; Ind. Code § 36-1-10-14(a).

17. By law, the Department must hold a hearing on the objection petition no earlier than five (5) days and no later than thirty (30) days following receipt of the County Auditor’s certification. Ind. Code § 36-1-10-14(c). Accordingly, the Department set the date for a public hearing on the objection petition for January 4, 2023, at 4:00 p.m. and mailed notice of the hearing to the leasing agent and the first ten taxpayers whose names appeared on the petition. Ind. Code § 36-1-10-14(d). In the notice of the hearing and during the hearing, the Department informed any and all participants that additional written evidence and testimony could be offered no later than January 18, 2024.

18. At the hearing, the following individuals testified as Objectors:

Jorge Fernandez
Tina Hughes
Amanda Scheitlin
Ann Cornewell
Abby Norden
Amber Oda
Howard Traxmor
Sean Collentine
Emmanuel Ortiz

At the hearing, the following individuals testified on behalf of the County:

Mark Crandley, attorney from Barnes and Thornburg
Laura Maser, County Attorney
Jason Semler, financial advisor from Baker Tilly Municipal Advisors (“Baker Tilly”)
Chris Cloud, deputy County Auditor

David Marusarz, Deputy General Counsel for the Department, served as hearing officer and submitted a report to the Department on the hearing. *Hearing Officer’s Report*.

19. Objectors presented the following exhibits, which are thus part of the Record:

Objectors Exhibit A	Petition, with the following attachments:
Objectors Exhibit B	“Appendix A”: E-mail from Emily Almodovar to Alice Leubke, November 29, 2023, at 4:19 pm
Objectors Exhibit C	“Appendix B”: E-mail from Jenny Banks, Department Communications Director, to Jorge Fernandez, November 27, 2023, at 9:37 am
Objectors Exhibit D	“Appendix C”: Additional statement from Jorge Fernandez
Objectors Exhibit E	“Appendix D”: Copy of web version of letter to the Editor from Jorge Fernandez to the <i>Journal Gazette</i>
Objectors Exhibit F	Jorge Fernandez e-mail to Department; January 6, 2024, at 5:24 pm
Objectors Exhibit G	Jorge Fernandez e-mail to Department; January 17, 2024, at 6:27 pm
Objectors Exhibit H	Jorge Fernandez e-mail to Department; January 17, 2024, at 6:45 pm
Objectors Exhibit I	Jorge Fernandez e-mail to Department; January 17, 2024, at 7:01 pm
Objectors Exhibit J	Jorge Fernandez e-mail to Department; January 18, 2024, at 9:27 pm
Objectors Exhibit K	Amanda Scheitlin e-mail to Department; January 14, 2024, at 8:15 pm
Objectors Exhibit L	Ann Cornewell letter to Department; January 12, 2024
Objectors Exhibit M	Leslie Chalfant e-mail to Department, January 9, 2024, at 10:25 am
Objectors Exhibit N	Sean Collentine e-mail to Department, January 17, 2024, at 4:03 pm
Objectors Exhibit O	Sean Collentine letter to Department, January 16, 2024, with attachments
Objectors Exhibit P	Tina Hughes e-mail to Department, January 9, 2024, at 7:27 pm, with attachments

Objectors Exhibit Q	Alice Leubke e-mail to Department, January 8, 2024, at 9:23 am, with attachment
Objectors Exhibit R	Tina Hughes e-mail to Department, January 18, 2024, at 9:34 pm
Objectors Exhibit S	James Fenton letter January 16, 2024
Objectors Exhibit T	James Fenton letter January 21, 2024
Objectors Exhibit U	Indiana Public Access Counselor (“PAC”) Handbook on Indiana’s Public Access Laws, Revised March 2022

20. The County presented the following exhibits, which are thus part of the Record:

County Exhibit 1	Lease between Allen County Commissioners and Allen County Building Corporation
County Exhibit 2	Allen County Commissioners’ Letter to Department, January 18, 2024
County Exhibit 3	Timeline & Notices
County Exhibit 4	Proof of Publication of Notice of June 7, 2023, Public Hearing on Proposed Local Income Tax Ordinance; Proof of Notice to Underlying Taxing Units
County Exhibit 5	Proof of Publication of Notice of July 20, 2023, Public Hearing on Proposed Local Income Tax Ordinance
County Exhibit 6	Proof of Publication of Notice of September 20, 2023, Public Hearing on Proposed Local Income Tax Ordinance; Proof of Notice to Underlying Taxing Units
County Exhibit 7	Proof of Publication of Notice to Taxpayers Regarding Consideration of Allen County Ordinance 2023-10-26-01 Modifying Local Income Tax Rates
County Exhibit 8	Allen County Ordinance 2023-10-26-01 Modifying Local Income Tax Rates
County Exhibit 9	Certificate of the Auditor of Allen County, Indiana, Verifying Signatures on Petition Requesting Lease, along with Lease Petition Counterparts

County Exhibit 10	Resolution No. 2023-11-16-01, Resolution of the County Council of Allen County, Indiana, Approving a Lease with the Allen County, Indiana Building Corporation
County Exhibit 11	Open Door Law Notice and Proof of Posting for Building Corporation November 20, 2023, Meeting
County Exhibit 12	Resolution No. 11-17-23-03, Resolution of the Allen County Commissioners Approving the Formation of the Building Corporation
County Exhibit 13	Resolution No. 11-17-23-04, Resolution of the Allen County Commissioners Approving the Terms and Conditions Regarding the Lease
County Exhibit 14	Certificate of Incorporation and Articles of Incorporation for the Building Corporation
County Exhibit 15	Call of Special Meeting and Waiver of Notice for November 20, 2023, Building Corporation
County Exhibit 16	Resolutions of the Initial Meeting of the Board of Directors of the Building Corporation
County Exhibit 17	Resolutions of the Special Meeting of the Board of Directors of the Building Corporation
County Exhibit 18	Code of Bylaws for the Building Corporation
County Exhibit 19	Proof of Publication of Notice of December 1, 2023, Hearing on Proposed Lease between Allen County and Building Corporation
County Exhibit 20	Resolution No. 12-01-23-05, Resolution of the Allen County Commissioners Receiving and Approving the Petition of Taxpayers Requesting the Leasing of Certain County and Other Criminal Justice Facilities and Approving Execution of a Lease
County Exhibit 21	Executed Lease by and between Allen County and Building Corporation
County Exhibit 22	Proof of Publication of Notice of Execution of Lease
County Exhibit 23	Online Petition Objecting to Lease
County Exhibit 24	Auditor's Certification of Petition Objecting to Lease

County Exhibit 25	Baker Tilly Study, November 19, 2021
County Exhibit 26	Baker Tilly Study, October 25, 2023
County Exhibit 27	Elevatus Study
County Exhibit 28	<i>Morris v. Allen County</i> Complaint, No. 1:20-cv-34, filed January 21, 2020
County Exhibit 29	<i>Morris v. Allen County</i> Order, No. 1:20-cv-34, issued March 31, 2022
County Exhibit 30	Allen County Council Resolution 2023-11-16-01
County Exhibit 31	ACRAJ Alternative Plan

21. The Department recognizes the following items as part of the Record: (1) the Hearing Officer’s Report; (2) the Hearing Procedures Script; (3) the Hearing Record of Evidence; (4) a digital recording of the hearing; and (5) all exhibits submitted by the Objectors and the County.

SUMMARY OF THE PARTIES’ CONTENTIONS

A. Summary of Objectors’ Contentions

22. The remonstrance petition submitted by the Objectors contained the following objections:

- 1) The approval of the lease by the Allen County Council (“Council”) is questionable given the timing of the formation of the Building Corporation and the exclusion of the Council from making future fiscal decisions related to the jail project.
- 2) The County has not adequately evaluated the potential costs and damages, including environmental aspects, or properly considered potentially better alternatives offered by Help Not Handcuffs and Allen County Residents Against the Jail (ACRAJ).
- 3) The Lease does not adequately limit the ability of the Allen County Commissioners (“Commissioners”) from renting out jail beds to other counties or the federal government, or properly considered potentially better alternatives offered by Help Not Handcuffs and ACRAJ.
- 4) It is unwise not to include further language in the lease to ensure that property tax will never be used to pay for the project.
- 5) The Lease potentially risks putting the total debt obligations of the County over the debt limitation under Article XIII of the Indiana State Constitution (“constitutional debt limit”).

- 6) It is unnecessary and unwise to lease the County Courthouse.

Objectors Exhibit A.

23. Jorge Fernandez testified to several items. First, that the Council failed to perform an adequate investigation, as required by Ind. Code § 36-1-10-7, instead giving only “tacit approval.” He then stated that immediately after the Council’s approval, the Commissioners formed the Building Corporation the next day, and according to the Secretary of State’s website was formed on November 20, 2023. He stated that because there are no Council members on the Building Corporation’s board, the lease may constitute a violation of the Contracts Clause of the United States Constitution. *Testimony of Jorge Fernandez, video recording of hearing at 0:14:09.*² Mr. Fernandez later clarified that the Council adopted a resolution approving the lease. *Testimony of Jorge Fernandez, video recording of hearing at 0:32:49.*

24. Mr. Fernandez then raised a second objection, that it is unclear what the necessity of the new jail. He stated that the new jail would have 1300 beds, but argued this was no longer necessary as the County’s contract with the United States Marshal Service (“USMS”) had expired and the County will no longer take in out of state inmates, so the County should not be taking in inmates from out of state, anymore. He stated that the details of the project from the County were “vague” and “nebulous”, which he attributed to the Council giving tacit approval. *Testimony of Jorge Fernandez, video recording of hearing at 0:21:07.*

25. Mr. Fernandez then raised the next objection, that the proposed lease did not properly go through the controlled project process pursuant to Ind. Code § 6-1.1-20-0.5 et seq. He stated that the County claimed two statutory provisions exempted this Lease from being subject to a voter referendum; first, that property tax was only used as backup revenue to make payments, and second, that the jail project is in response to a court order. To the first claim, Mr. Fernandez stated that it is not actuarially possible to project revenues for the local income tax over time and a representative from Baker Tilly even said at the public hearing that property tax backup is necessary. *Testimony of Jorge Fernandez, video recording of hearing at 0:23:20.*

26. To the second claim, Mr. Fernandez argued that it should be stated expressly in the lease that the project will be used for a new jail, pursuant to a federal supervision, and not to remediating any of the other issues related to the site, such as environmental problems at the site. *Testimony of Jorge Fernandez, video recording of hearing at 0:25:47.* Mr. Fernandez later clarified that the County is under a federal court order directing some action to correct some constitutional violations but added that the court’s involvement is “vague”. *Testimony of Jorge Fernandez, video recording of hearing at 0:34:41.*

27. Mr. Fernandez then raised the next objection, that the Lease puts the County’s total debt obligations over the constitutional debt limitation. He stated that a representative from Barnes and Thornburg told the Council that using a Building Corporation “gets around the municipal debt limit.” Mr. Fernandez stated that there should be guidance whether a lease to a building corporation constitutes debt for purposes of this limitation. He added that while he does not

² Throughout this Order, the timestamps to the hearing recording are approximate.

know the assessed value of the County, he believed that the project has a \$22.2 million cost for 20 years and so it is a relevant question whether the debt limitation has been crossed. *Testimony of Jorge Fernandez, video recording of hearing at 0:29:12.* He also stated that a building corporation must follow public meeting and public records laws based on PAC guidance stating that a building corporation is a “public agency.” He later clarified that the guidance he referred to is the Public Access Handbook published by the PAC’s office. *Testimony of Jorge Fernandez, video recording of hearing at 0:16:12; video recording of hearing at 0:30:52, video recording of hearing at 0:38:00.*

28. During his testimony, Mr. Fernandez also referenced two excerpts from the Petition, labelled “Appendix B” and “Appendix C,” respectively.³ Mr. Fernandez described “Appendix B” as questions and communications that he had with the Department between November 15 and December 1, 2023. Specifically, the Appendix contains the following questions and responses:

- Whether the Department agrees with the position of the Barnes and Thornburg representative’s statement before the Council that the lease was exempt from the controlled project process.
- The Department’s response to the above question, including an excerpt of Ind. Code § 6-1.1-20-1.1(a)(1).
- A follow-up question whether the Department takes the position that “it just takes a county at its word of what qualifies as reasonably expects,” again in reference to Ind. Code § 6-1.1-20-1.1(a)(1)
- The Department’s response to the follow-up question, that the Department “will ensure that Allen County is following the Indiana Code as it pertains to the Department’s involvement in the process.”

Testimony of Jorge Fernandez, video recording of hearing at 0:23:58; Objectors Exhibit C.

29. Mr. Fernandez did not describe “Appendix C” in testimony, but the Petition describes it as a “hypothetical idea” offered by Mr. Fernandez that, if true, would demonstrate that leasing the Courthouse is unnecessary and unwise. This Appendix states the “weird design of this contract” is designed to circumvent safeguards in Indiana law against wasteful debt and leases, as follows: First, by circumventing constitutional debt limits for municipalities. Second, by circumventing County Council input by excluding them from the draft contract. Third, the use of the Courthouse as collateral, which circumvents legal safeguards against leases for unoccupied structures and the duty of the Council to guard against unneeded leases. *Testimony of Jorge Fernandez, video recording of hearing at 0:29:29; Objectors Exhibit D.*

30. Tina Hughes then testified to several items. She stated that she is speaking on behalf of those living near the proposed jail site. She reiterated several points made by Mr. Fernandez,

³ Other Appendices were included in the Petition, labelled “Appendix A” and “Appendix D,” respectively, that were not mentioned in testimony.

such as the claim that the County is borrowing against the constitutional debt limit and the lack of Council participation. She added that the Council requested the Commissioners do an independent study other than by a firm that gives campaign contributions, which she said was denied. She also said the American Civil Liberties Union (“ACLU”) informed the Council that if they do not approve a plan, they could be sued. She stated that there was no independent feasibility study done. *Testimony of Tina Hughes, video recording of hearing at 46:00.*

31. Ms. Hughes then said that an alternative plan was developed by members of the community, one that she claimed would save approximately \$200 million, be built in less time, have the same number of beds, include a mental health annex, and does not require borrowing against the Courthouse. *Testimony of Tina Hughes, video recording of hearing at 49:16.*

32. Regarding the lease itself, Ms. Hughes stated the terms are too vague, expensive, too excessive, and unnecessary, so the local income tax will be a burden. *Testimony of Tina Hughes, video recording of hearing at 52:32.* She later also asked whether a delineation report was done on the jail site. *Testimony of Tina Hughes, video recording of hearing at 1:51:49.*

33. Amanda Scheitlin testified that the Commissioners gave no consideration to the proposed jail site’s designation as an environmental justice area, as well as being the poorest area in the County. *Testimony of Amanda Scheitlin, video recording of hearing at 55:48.*

34. Ann Cornewell testified by focusing only to the environmental concerns on the jail site, adding that building on a swamp will make the project more expensive. *Testimony of Ann Cornewell, video recording of hearing at 57:49.*

35. Abby Norden then testified, first by agreeing with prior testimony in objection. She then stated that she had brought up environmental impacts in the area since 2022 and that the Commissioners have been warned multiple times that the project is going to do environmental damage and not benefit the community. She also stated the federal judge said he cannot order a new jail, so the Commissioners are misleading the public by saying this jail is required by a court order. Ms. Norden then stated that time is running out on use of ARPA funds, that the County was warned about the lack of funding, and that the people are asking for more transparency. Finally, she stated that the County is not properly addressing the problem of mistreatment of prisoners in jail. *Testimony of Abby Norden, video recording of hearing at 1:02:56.*

36. Amber Oda then testified, stating that there is a conflict of interest between the Commissioners and Elevatus, who was hired for \$21 million to \$23 million and advocated for the most expensive project. She stated that incarceration has been up since 1970, more than the crime rate in the same period, and the new jail will not address overcrowding in jails or other issues. She also stated there has been no transparency. *Testimony of Amber Oda, video recording of hearing at 1:11:15.*

37. Howard Traxmor then testified, stating that he believes the lease goes beyond what the court order requires, and that a referendum should be held if the County does not want to fix the existing jail. He also stated that the mixing of property taxes and other revenues “provides

a level of complexity that Indiana public finance law is behind on,” and that there needs to be more clarification when traditional bonding would take over. Mr. Traxmor then argued that the Department should deny the lease until public finance laws are clarified on what happens when reserve funds are needed, as an economic recession is likely in the near term.

Testimony of Howard Traxmor, video recording of hearing at 1:14:53.

38. Sean Collentine testified by stating that the proposed jail expense is excessive when compared to newly completed or in progress jails in other counties in the state. He argued that the cheapest option is the reasonable and obvious one, and reiterated the statement that the judge did not require an extensive project. He claimed Elevatus offered the sheriff the “perfect idea of what a jail should look like” without also offering alternatives, including the judge’s “midterm solution” and using the land for those awaiting trial for level 6 felonies. He also argued the County needs to be more transparent. He also reiterated prior testimony about the need for a referendum. *Testimony of Sean Collentine, video recording of hearing at 2:12:23.*

39. Emmanuel Ortiz testified by reiterating prior testimony about the need for a referendum on the jail, overhauling the current jail as an alternative, and environmental concerns, including referencing the National Environmental Policy Act. *Testimony of Emmanuel Ortiz, video recording of hearing at 2:25:25.*

B. Summary of County’s Contentions

40. Mark Crandley testified on behalf of the County. He first testified that the County followed all of the statutory procedures for entering into a lease. He then stated that the lease is necessary because the County must provide a jail. Mr. Crandley then described the conditions of the current jail, stating that it is 43 years old and has deteriorated due to continuous daily use; that it has 732 available beds, with occupancy being between the high 700s to 900 in recent years; and maximum occupancy is about 80% of available beds, which in the case of the jail is about 586 beds. *Testimony of Mark Crandley, video recording at 1:20:10.*

41. Mr. Crandley then stated that the federal court order did not mandate a new jail but did require the County to remediate the deficiencies in the jail, including what a new jail would need if one were built. He stated the current location cannot accommodate a physical expansion “that will remedy its endemic overcrowding and the harms flowing from that overcrowding,” and that given the remedy, a new jail is necessary. Mr. Crandley then said the County hired Elevatus because they were a professional and licensed architectural firm, he is not aware of any political contributions from Elevatus staff, and any contributions made would not affect the neutrality of the firm towards the project. *Testimony of Mark Crandley, video recording at 1:23:19.*

42. Mr. Crandley then stated that the County believes the lease is not unwise because a new jail would respond to concerns 20 years in the future. He stated Elevatus made projections on jail population going into the 2040s based on different methods and concluded that the County needs a jail with 1500 beds. He then responded to proposed alternatives to the new jail how they are untenable: specifically, horizontal expansion into a nearby park in downtown Fort Wayne would be unfeasible; vertical expansion by adding a new floor would not add enough beds based on long-term projections; neighboring counties have not

expressed in forming a regional jail system or accepting inmates from the County, and transportation to a regional jail would be cost prohibitive. *Testimony of Mark Crandley, video recording at 1:26:13.*

43. Mr. Crandley then addressed each of the concerns brought up by various Objectors. First, he stated that the new jail is not a controlled project because it is exempt under a provision in Ind. Code § 6-1.1-20-1.1 where the project is in response to a court order holding that a federal law has been violated. He then said another provision in Ind. Code § 6-1.1-20-1.1 exempts the project, where funds other than property taxes are reasonably expected to be used to pay for lease rentals, and based on Baker Tilly projections, a local income tax rate of 0.11% would generate the needed revenue without resorting to property taxes. *Testimony of Mark Crandley, video recording at 1:29:29.* Mr. Crandley later clarified that inclusion of a property tax backup in the lease is a “prudent safety net” that most leases will have. *Testimony of Mark Crandley, video recording at 1:39:10.*

44. Next, Mr. Crandley stated that the Council fulfilled their statutory duties for the Lease by adopting a resolution approving the Lease and approving the jail LIT rate to pay the lease rentals. He then stated that environmental concerns are understandable but are under the review of environmental agencies and not relevant to the Lease. He then said that building corporations can be created after the lease is approved. *Testimony of Mark Crandley, video recording at 1:31:48.*

45. Regarding the constitutional debt limit, Mr. Crandley stated that the lease is not considered debt and a commonly used method of municipal finance. Finally, he stated that the overcrowding in the jail was not the result of federal inmates because the contract with the USMS expired in June of 2022. *Testimony of Mark Crandley, video recording at 1:33:57.*

46. Jason Semler then testified that while the “ultimate source” of revenue for the bond is the jail LIT, “from the bond purchasers’ perspective, property taxes are a more secure revenue stream” and so including multiple revenue sources will provide more security for the bonds and make the overall financing cheaper through a lower interest rate. He then said use of a property tax backup is an industry practice. *Testimony of Jason Semler, video recording at 1:44:57.*

47. Laura Maser then testified regarding the environmental concerns. She stated that there are wetlands on the proposed jail site that require delineating and permitting, pending resolution of whether IDEM or the Army Corps of Engineers has jurisdiction. She then stated the permitting process will not derail the project or affect the Lease. *Testimony of Laura Maser, video recording at 1:46:47.*

48. Christopher Cloud then testified. He first reiterated prior testimony about the process of delineating wetlands on the proposed jail site, adding that this is common with massive site development, that this site was a former farm field, that a delineation determination is expected around the end of January, and the cost of delineation has been worked into the project budget. *Testimony of Christopher Cloud, video recording at 1:52:24.*

49. Mr. Cloud then stated that the project itself will cost \$318 million, with an annual cost of \$22.2 million, and the proceeds coming from debt issued by the Building Corporation. He claimed the \$22.2 million annual cost is based on “Baker Tilly’s worst-case scenario of

where interest rates might be at the time of our bonding.” He described this scenario as the County still being able to make payments with the assumption that the jail LIT rate is 0.11%, \$5.925 million of EDIT revenue, an interest rate of 1% over initial estimates, and no projected growth in income tax overtime. *Testimony of Christopher Cloud, video recording at 1:57:27.* He later clarified that \$22.2 million reflects the estimated maximum annual cost, but the total cost will not be known until bids are received. *Testimony of Christopher Cloud, video recording at 2:01:09.*

50. Mr. Cloud then stated that the County and other units, including school corporations, frequently use leases for projects, and the current jail was built using this method. He stated the Building Corporation issues the debt and not the County, so the constitutional debt limit will not apply. *Testimony of Christopher Cloud, video recording at 2:00:05.* He then reiterated that the Council has been involved in the process, including public hearings, imposing a jail LIT, and adopting a resolution approving the Lease. *Testimony of Christopher Cloud, video recording at 2:04:04.*

51. Finally, Mr. Cloud stated that the Courthouse was leased as a means of collateral because the jail itself cannot be leased until it is actually built. He stated that leasing the Courthouse “saves the County millions and millions of dollars on interest” and once the jail is built, the lease will be amended so the Courthouse is removed and the jail added as the lease property. He said the Courthouse was chosen because it is the largest County-owned building that is not currently already pledged to a project. *Testimony of Christopher Cloud, video recording at 2:08:31.*

C. Post-Hearing Testimony & Evidence

52. After the hearing, Mr. Fernandez submitted the following additional statements. First, that Appendix B in the Petition was in reference to his correspondence with the Department after the November 16 vote, and that the County has made inconsistent statements about what exception to the Controlled Project statutes applies, though he did not elaborate further. *Objectors Exhibit F.* Next, that had the County done their due diligence on the proposed jail site, they would have identified environmental issues, such as leaked storage tanks, and the County has not accounted for all the environmental costs dealing with the jail. *Objectors Exhibit G.* Next, that Commissioners allowed American Rescue Plan Act (“ARPA”) funds to revert, but they could have used that money for an independent study on jail beds, citing a County report on use of ARPA funds in 2023 and a *Journal Gazette* editorial on concerns with appropriations with unspecified projects, including a new jail. Mr. Fernandez stated this is evidence of the lack of investigation by the County and the vagueness of the project. *Objectors Exhibit H.* Next, that the County included in its 2024 budget a line item for a bond payment, which Mr. Fernandez claimed contradicts a statement by the County that gave him the impression “they didn’t have any debt.” *Objectors Exhibit I.* Finally, that a court decision on the applicability of the debt limitation on leases is questionable because the lessee corporation in that case is not the same type of entity as the Building Corporation. Also, that a property tax backup would be triggered if the Council does not appropriate local income tax funds. *Objectors Exhibit J.*

53. After the hearing, Ms. Hughes provided two e-mails. The first e-mail contained the following documents and statements:

- A Word document with screenshot of a map of underground storage tanks in east Fort Wayne. Below the screenshot is a narrative that the site was granted an “NFA” because it was closed without property use restrictions.
- A letter dated August 17, 2021, from the Northeastern Indiana Regional Coordinating Council to DLZ Indiana, LLC, with a highlighted sentence stating that the Sunnymede neighborhood is defined as an “Environmental Justice Area.”
- The following statements:
 - ACRAJ held a town hall on September 9, 2023, with Council members present. The alternative plan was offered. The attending Council members expressed their intent to review the plan. The plan was presented to the Commissioners on October 6, 2023.
 - The Council proposed an independent study to the Commissioners on March 3, 2023, which the Commissioners declined.
 - Ms. Hughes is not opposed to the new jail but is opposed to the County not receiving public input and leveraging the Courthouse. She reiterated that the ACLU sent a letter to the Council’s attorney that “they could sue councilmen individually if they didn’t approve a plan.”
 - The Commissioners and the County Sheriff have not come up with creative solutions.
 - Elevatus did the most expensive feasibility study and donated to the Commissioners’ election campaigns in 2021.
 - That when a meeting was held, they did not inform the public that they were able to submit testimony.
- The following information regarding the alternative plan:

Finish floors 4-6 of current jail creating 236 beds	\$30 million
Use annex building at 1 West superior to house mentally ill with 90 beds	\$35 million
Build a new 2 story Lateral Pod in the North Parking area creating 200 beds	\$75 million
Use the Citilink Bus terminal as the Jail parking lot, and move the terminal	\$5 million
Plan will free up 90 beds in current jail	
616 total beds	\$145 million

Objectors Exhibit P. In the second e-mail Ms. Hughes responded to Mr. Crandley’s statement at the hearing that the alternative plan is unrealistic by reiterating the need for an independent study. *Objectors Exhibit R.*

54. After the hearing, Amanda Scheitlin submitted an e-mail to the Department. In the e-mail, Ms. Scheitlin reiterated several statements previously by other Objectors, and also made the following summarized statements:

- The Commissioners “went into panic mode” following the federal court ruling and made “illogical decisions” with “complete lack of transparency to the public.” The project only addresses the size of the jail, not any of the other issues such jail demographics, addiction, mental health, and homelessness.
- The previous owner of the site failed to remediate environmental problems. IDEM visited the seven wetlands on the site and ordered a delineation, which was ignored.
- Homes near the jail site will lose about \$12,000 in equity.
- The FBI will hopefully take interest “as it has become evidence that an outside source may be the only to[sic] demand accountability.”

The e-mail also contained several links to a report by the St. Joseph Community Health Foundation, and internet news websites including the *Journal Gazette*. *Objectors Exhibit K*.

55. Ann Cornewell submitted to the Department, by mail, a handwritten statement wherein she reiterates some of the prior testimony, but also states the Commissioners should have investigated the water issues in Sunnymede, citing as examples concrete damage to her driveway and deck due to oversaturation. She provided two photos illustrating this, as well as a map of waterways in Sunnymede. She also claims the Commissioners are just looking to move the jail out of downtown Fort Wayne rather than keep the jail where it was at a reduced cost. *Objectors Exhibit L*.

56. After the hearing, Leslie Chalfant submitted an e-mail to the Department, which started by questioning the need for a new jail when an entire floor of the current jail is being unused. Leslie Chalfant also claimed the Commissioners are only concerned about their own monetary benefit, and stated there is a rumor that one of the Commissioners said at one point the taxpayers will not notice the tax because it will be taken out of paychecks. *Objectors Exhibit M*.

57. After the hearing, Sean Collentine submitted an e-mail. Mr. Collentine states in this e-mail that he made a public records request to the Commissioners’ public information officer for the petition for a lease filed under Ind. Code § 36-1-10-7(1). He stated that “my request had been cycled to the city by mistake” and the officer would “get with the City of Fort Wayne and try to locate the request.” He then argues that if “[the public information officer] is unable to locate it, then the correct procedures have not been followed” for adopting the Lease. He then claimed that, based on this conclusion, the Department must void the Lease due to procedural defects. *Objectors Exhibit N*.

58. Mr. Collentine also submitted a written statement by mail with several attached documents. In his statement, Mr. Collentine states the following:

- “The sheer size and cost of the project should have been thoroughly and independently looked at by at least one if not two other qualified designers of jails.” Failing to do so makes this Lease unnecessary or unwise.
- The federal court order details three requirements from the County regarding the jail: (1) provide a safe environment; (2) commit sufficient staff to supervise prisoners; (3) commit sufficient staff to ensure prisoners have recreational time. The court order also required the County to respond within 45 days and if a long-term capital solution is offered, provide tangible proof of progress such as drawings and zoning clearances. Finally, the judge wanted to learn of the County’s plan to “reduce the jail’s inmate population to its capacity of 732 detainees.”
- Elevatus provided two options to the County: either modify the existing jail at \$25 million or build a new jail at \$316 million. The former option “was dismissed by Elevatus’ report” because it did not address incarceration projections. Elevatus is “the sole consultant and producer of the jail study” and has no incentive “to reduce the actual cost of the project to be built, or to produce a less costly alternative design.”
- Although three hearings were held, there was no public discussion of the project or answers to public questions, except for letters to the editor.
- The per bed cost of the County’s proposed jail is compared to jails built in seven other counties, as follows:

Henry County	\$97,560
Fulton County	\$100,000
Hamilton County	\$109,966
Clay County	\$112,000
Vigo County	\$132,673
Madison County	\$162,447
Tipton County	\$190,476
Allen County	\$243,077

- The Council has been derelict for the following reasons: (1) there was no actual investigation done because there was no independent study; (2) the difference in costs between the two options offered by Elevatus would lead to a second opinion but that was not sought; (3) Tom Harris, the president of the Council, admitted he did not read the federal court order, and was the swing vote in the Council’s resolution.
- A local Justice Reinvestment Advisory Council (“JRAC”), established in each county by House Enrolled Act 1068-2021 (“HEA 1068”), must “promote the use of evidence-based and best practices in the areas of community-based sentencing alternative and recidivism reduction; review, evaluate, and make recommendations about local practices.” Mr. Collentine states he attended local JRAC meetings and says, “nothing has been discussed at these meetings of could be done about the ongoing jail dilemma,” referring to overcrowding.
- The following recommendations:

- The Department should reject the lease because one of the key votes on the lease “did not read the federal ruling that generated the new jail project.”
- The Council must “hold the County Commissioners to the necessity of a second (and third) evaluation of the project,” including alternatives to a lease.
- The prospective evaluators must agree “to consult with those Indiana Counties” referenced in the letter and issue a report within four months.
- Funding for the studies must come from the County Sheriff’s commissary fund or from appropriated but as yet unspent funds for jail personnel hirings.

Objectors Exhibit O.

59. Mr. Collentine also included a document with a table showing in detail the per bed cost for the County’s proposed jail, the seven county jails referenced above in addition to Hamilton County, and the sources for this information:

Newer jails cost in Indiana as of Feb., 2023			<u>Information Source</u>
1. Delaware County	500 beds @ \$45 million	cost per bed=\$90,000	Correctional News 10/6/20
2. Henry County	246 beds @ \$24 million	cost per bed= \$97,560	Muncie Star Press 1/3/22
3. Fulton County	230 beds @\$23 million	cost per bed= \$100,000	Indy Star 2/16/21
4. Hamilton County Addition	120 beds@ \$13.1 million	cost per bed= \$109,166	Indy Star 6/12/17
5. Clay County	200 beds @ \$22.4 million	cost per bed=\$112,000	Inside IN Business 4/5/22
6. Vigo County	505 beds @ \$67 million	cost per bed= \$132,673	Tribune Star 2/15/22
7. Madison County	474 beds @ \$77 million	cost per bed= \$162,447	Herald Bulletin 11/18/22
8. Tipton County	84 beds@ \$16 million	cost per bed=\$190,476	Kokomo Trib. 6/25/23
Allen County(proposed)	1,300 beds @\$316 million	cost per bed=\$243,077	

Objectors Exhibit O. Mr. Collentine also provided excerpts of the newspaper articles referenced in this table. He also provided a printout of a Microsoft Bing “Copilot” inquiry on the cost and capacity of the Allen County jail. The inquiry response was as follows (internal citations omitted):

“According to web search results, the proposed Allen County Jail is expected to have a cost of more than \$300 million and a capacity of nearly 1,340 beds. The jail is planned to be constructed at the site of the old International Harvester facility on Meyer Road, about five miles southeast of downtown Fort Wayne. The project is intended to address the issues of overcrowding, understaffing, and inmate safety in the current jail, which has been the subject of a federal lawsuit and a court order. However, the location and the size of the new jail have been controversial, as some community members and criminal justice officials have expressed concerns about the need for more alternatives to incarceration, the distance from the courts, and the lack of input from the stakeholders.”

Objectors Exhibit O.

60. After the hearing, Alice Leubke submitted her written statement. Ms. Leubke reiterated prior testimony from other Objectors, adding that in 2015 a planning committee proposed to move the jail from downtown and converting the building into rentals or mixed-use property. Ms. Leubke stated that, after this, the Commissioners took over maintenance of the jail but neglected to maintain it. She then reiterated concerns about environmental damage in the proposed jail site, including illegal dumping, but added alleged dumping of mercury. She then stated, as did other Objectors, that the jail needs to remain located downtown close to the Courthouse but added that the proposed jail site does not have a bus service, sidewalks, and lighting, which creates a safety issue since, as she claimed, inmates are released late at night. She also objected to the overall cost of the Lease, which she said was \$350 million, as well as the use of the Courthouse as collateral on the Lease. *Objectors Exhibit Q.*

61. After the hearing, the Commissioners, through Mr. Crandley, submitted a response to the Objection, as follows.

62. Regarding jail conditions, the Commissioners stated that the current jail opened in 1981 and operating non-stop since then, with expansions in 1994, 1998, and 2004. They stated the jail has 732 beds but occupancy “has risen to over 900 at times.” They then said law enforcement has tried to address overcrowding by releasing detainees and using what was described as “boats” as additional beds, but which also contributes to congestion. They stated jail congestion prevents properly classifying inmates, which has led to violence, as well as four suicides since 2011. They claimed the jail layout also “demands a higher number of officers and more foot patrols than most modern jail designs” and has “inadequate audio and video surveillance.” *County Exhibit 2.*

63. Regarding the federal litigation, the Commissioners stated back in 2020 the ACLU filed a class action lawsuit against the County and the County Sheriff alleging overcrowding and other jail conditions violated inmates’ federal constitutional rights. They said the court’s opinion has given on March 31, 2022, finding that “the jail conditions violated the federal civil rights of all current and future detainees.” They then stated that “[w]hile the federal court could not compel the construction of a new jail,” the court’s findings “show[ed] that a new jail was needed to adequately address the constitutional violations found in the order.” According to the Commissioners, the court then ordered the Commissioners and Sheriff “put together a long-term plan to address the conditions of the jail within 45 days of the order” as well as “short term proposals for alleviating the jail conditions in the interim.” *County Exhibits 2, 28, & 29.*

64. Regarding the plan, the Commissioners claimed that the only condition that they could remedy “is the size of the jail” because they have the statutory power to establish and maintain a jail under Ind. Code § 36-2-2-24(a), not a power to prosecute crimes, determine bail, try and sentence defendants, or staff or operate the jail. The Commissioners stated that they hired Baker Tilly as financial advisor, Elevatus as architect, as well as bond counsel, and submitted a request for proposal for construction of a new jail. The Commissioners claim their actions have been open and public at several Council meetings, including:

- July 2022 – Commissioners & Baker Tilly addressed tax funding scenarios and educated Council on bonding & lease process.
- August 2022 – Commissioners & Baker Tilly addressed the project and answered follow-up questions, where Council also considered a jail LIT but declined to do so.
- May 2023 – Commissioners gave an update and asked the Council to conduct a public hearing on the jail LIT.
- July 29, 2023 – Commissioners asked the Council to adopt a jail LIT of 0.2%.
- August 17, 2023 – Commissioners asked for another hearing on jail LIT.

County Exhibit 2.

65. Regarding the work of Elevatus, the Commissioners stated that Ind. Code § 36-1-8-19 requires a feasibility study and public hearing on a proposed jail project. The Commissioners stated Elevatus identified the needs for the project, specifically that “a project to expand the jail should add sufficient space to avoid the need for further expansions in the near future.” The Commissioners then stated Elevatus concluded that “to meet the county’s needs 20 years into the future, [a new jail] should have approximately 1,500 beds.” The Commissioners then claimed Elevatus reviewed the feasibility of several options, including a horizontal expansion of the current jail, contracting with neighboring counties or a regional jail system, and a new jail at a new site, with the Commissioners and Council choosing the third option. *County Exhibit 2.*

66. Regarding the alternative plan proposed by ACRAJ, the Commissioners argued that the plan “was not prepared or reviewed by an architect, engineer, or other expert” and that “[t]here is nothing to support its contentions as to what this project would cost, how many beds it would provide, or whether it would even be feasible.” They also claimed the Alternative Plan does not address security and monitoring issues or the deterioration of the current jail. The Commissioners then claimed that, compared to ACRAJ’s speculation, they “proceeded in a responsible manner based on the recommendation of its professionals” and “made a data-based decision.” Finally, they claimed the federal judge rejected ACRAJ’s motion for consideration of their alternative plan. *County Exhibit 2.*

67. The Commissioners then responded to specific claims made by the Objectors at the January 4 hearing:

- The Building Corporation was formed as of November 20, 2023, the date of filing with the Secretary of State’s Office. The Lease was provided to the Council for approval on November 16, 2023, but actual execution was after the formation of the Building Corporation.
- The Indiana Supreme Court determined in *Book v. Indianapolis-Marion Building Authority*⁴ that lease purchase structures did not violate the constitutional debt limit.

⁴ 126 N.E.2d 5, 9 (Ind. 1955).

The Court in *Book* determined that “[s]o long as the lease rental payments paid by the governmental body for the leased facilities are fair and reasonable, then the lease itself is proper” and do not constitute a debt of the government because “future annual installments of rent do not become debts until earned.” The Indiana Supreme Court also held in *Teperich v. North Judson-San Pierre High School Building Corporation*⁵ that leases for school facilities are like contracts for services for a period of years and no debt is incurred “as long as the rental payment are made in advance out of current revenues.”

- The Council approved the Lease after the requisite investigation, which involved “many public discussions and consider[ation of] alternatives to the current project.” The Council also approved the pledge of “certain tax revenues” to pay the lease rentals.
- The Courthouse is being leased because “[a] lease entered into by a political subdivision and a building corporation requires a structure or other asset serving as the leased premises to be available for use and occupancy by the political subdivision.” This is done to avoid the County making payments for services not rendered by the Building Corporation. This also avoids the building corporation having to capitalize \$28 million in interest during the three-year period during which the new jail is being built. Therefore, leasing the Courthouse to the Building Corporation would save taxpayers an estimated \$28 million in lease rental payments.
- Baker Tilly’s estimates of jail LIT revenues “make it unlikely that property taxes will ever be used on the project.” The jail LIT and County Revenues “are estimated to generate excess revenues beyond what is needed to pay the lease.” The property tax backup in the Lease “benefits taxpayers because it enhances the marketability of the bonds” which “can result in lower bond interest rates.”
- The project is exempt from the Controlled Project statutes in two ways. First, because pursuant to Ind. Code § 6-1.1-20-1.1(a)(1) the County “reasonably expects to pay lease rentals from funds other than property taxes,” even if the County has pledged to levy property taxes if the other funds are insufficient. Assuming LIT revenues do not increase over the life of the bond, LIT revenues will “provide approximately 113% coverage of the project’s anticipated lease rental payments.” Second, under Ind. Code § 6-1.1-20-1.1(a)(5), the project is in response to litigation “where a court holds that a federal law has been violated,” and is “intended to address such deficiency or violation.”

County Exhibit 2.

68. The County also provided documentation including a timeline of proceedings and supplemental materials. *County Exhibits 3 through 24.* This documentation will be referenced throughout this Order, as appropriate, and especially in the Analysis section.

⁵ 275 N.E.2d 814, 817-18 (Ind. 1971).

69. After the hearing, James Fenton, representing himself as attorney for ACRAJ, submitted a written statement via e-mail that, among other things, argues the use of property tax backup in the lease is “a clear signal that there is a significant enough risk . . . that resort to property taxes may be necessary” over the life of the lease, warranting a public referendum. *Objectors Exhibit S*.

70. Subsequently to his first e-mail, Mr. Fenton submitted another e-mail⁶ with the following six responses to the County’s written statement:

- The new jail is unnecessary because both County Superior Court Judge Frances Gull and Council member Ken Fries both expressed their belief to that effect. In addition, Mr. Fries has requested an independent study, which indicates the Council has not done an investigation in compliance with Ind. Code § 36-1-10-7(c)(2).
- The law of contracts⁷ requires a meeting of the minds between the two parties. The Building Corporation came into existence four days after the Council approved the Lease, therefore it could not enter into a Lease with the County on the date indicated on the Lease.
- The County leasing the Courthouse is “a classic subterfuge” to avoid the constitutional debt limit and a public referendum. Mr. Fenton here objects to the County’s references to the *Book* and *Teperich* cases because, whereas in those cases the units were leasing property to be used for government purposes, here the County is relinquishing property that already exists and owns to be leased back to the County. He also states that there is no case law supporting this arrangement and other units that used this process “most likely did not run afoul of the Thirteenth Amendment[*sic*] because the amounts were not the colossal sum at issue here.”
- The use of property tax backup is also “subterfuge” because “if there is even a possibility that property taxes will be used . . . then using property taxes as a backup is just a means of circumventing the provisions of the Controlled Project Statutes and should be invalid.”
- The County did not comply with Ind. Code § 36-1-10-7(c), which states that the lease is to acquire a structure, because by leasing the Courthouse the County is not “acquiring” a new jail within the meaning of this statute.
- Ind. Code § 6-1.1-20-1.1(a)(5) does not exempt the County from a public referendum on the jail project because the provision only exempts a court order holding that a federal law has been violated and the project is to address the violation. The County has not demonstrated the court order also hold the project will address the violation.

⁶ This e-mail was submitted after the January 18 deadline set by the Department for submission of additional written statements. In the interest of considering all testimony, the Department has taken Mr. Fenton’s statements under advisement.

⁷ Included citations are *Wells v. Wells*, 150 N.E. 361, 363 (1926); *Carr v. Hoosier Photo Supplies, Inc.*, 441 N.E.2d 450, 455 (Ind. 1982); and Am. Jur. 2d Contracts §§ 18, 19, at 354-44 (1964).

Mr. Fenton then concludes that, based on the above responses, the Department should reject the lease. *Objectors Exhibit T*.

71. Other testimony and evidence will be discussed as needed.

ANALYSIS

72. Under IC 36-1-10-14(a), a petition must state the reasons why the objectors believe why 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.⁸ 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.”

73. The Department has authority to interpret the property tax laws of the state.⁹ Indiana Code § 36-1-10-14(a) allows for a petition against a lease rental payable in whole or in part 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 the lease were reasonable, a finding which the courts have given deference.¹⁰

74. That being said, the Department’s interpretation of “unnecessary or unwise” is for the purpose of properly reviewing the petition. The analysis contained in this Order must not be construed as setting precedent or policy binding future lease executions, if any, under IC 36-1-10, especially since every situation involving a lease rental will have different facts and circumstances that warrant looking at each situation independently.

75. The Department also does not believe the terms “unnecessary” and “unwise” are meant to be or are allowed to be taken as separate standards. A proposed lease could be unnecessary, in the sense that the underlying project could be financed by some other means, but it could still be wise, in the sense that the lease shows responsible stewardship of the taxpayers’ money. By contrast, a proposed lease could be necessary because it is the only way to finance

⁸ Ind. Code § 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.”

⁹ Ind. Code § 6-1.1-35-1(1). Most of the property tax laws are contained in Ind. Code 6-1.1, though there are other such laws throughout the Code.

¹⁰ *Hall v. State Bd. of Tax Comm’rs*, 512 N.E.2d 891 (Tax Ct. 1987); *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 successful petition and remonstrance process under Ind. Code 6-1.1-20). 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).

a project under the circumstances, but it could still be unwise because, for example, better terms could be negotiated if the circumstances allow. In the case of the latter, it seems to be an inappropriate reading of the statute to execute a lease that could show a need but still let it be done unwisely. Therefore, for a lease execution to pass muster, it must be not unnecessary and not unwise.

76. It is apparent to the Department that the phrase invites the Department to involve itself into local policy matters. The Department has historically been deferential to the decisions of local officials regarding the exercise of their statutory powers. It regards the execution of a lease under Ind. Code § 36-1-10 as being no different. The Tax Court has determined that administrative review of a lease rental agreement by the Department must be “from a tax standpoint” and the Department must presume actions of other agencies were done in accord with Indiana law.¹¹ Moreover, it is clear from the language of the statute that it is the burden of the Objectors to state for the Department their reasons why the Lease is unnecessary or unwise as a matter of policy. That does not make an objection to the execution of the Lease an impossible feat, but it is a difficult one. The Department recognizes that local policy decisions often have proponents and opponents among residents, and reasonable minds may differ.

77. Ind. Code § 36-1-10-14(a), however, does not permit the Department to consider alleged procedural defects, statutory or otherwise, or lack of transparency as the sole basis to accept the objections to the Lease. This is evident in the wording of the provision, itself: “The petition must state the taxpayer's objections and the reasons why the lease is unnecessary or unwise.” Therefore, the Department must look at all the circumstances and aspects of the Lease pointing to the wisdom of executing it.

78. The Department will now analyze each objection stated by the Objectors in the Petition and presented at in the hearing and in supplemental evidence.

Objection #1: Council Involvement

79. Ind. Code § 36-1-10-7(c) provides that before a lease with an annual cost over \$250,000 can be executed for a project, the fiscal body must determine, “after investigation,” that the project is needed. Council Resolution No. 2023-11-16-01 states that “[a]fter investigation, the Council hereby finds and determines that a need exists for the Project and the Project to be financed through the Lease will be of public utility and benefit to the County.” *County Exhibit 10*. The Council also held multiple hearings, from July 2022 to August 2023, regarding the proposed jail and means of financing the project.

80. Ind. Code § 36-1-10-7 does not define “investigation” or provides what kinds of actions are necessary to fulfill the Council’s investigatory role. The Department therefore cannot evaluate the Council’s actions prior to adopting the resolution or substitute its own judgment about whether enough investigation was done, but must make a finding based on the statements in the Council’s resolution. The Council’s resolution states that there was an investigation prior to approval of the Lease, and the Department must take this at face value.

¹¹ *Bell v. State Bd. of Tax Comm’rs*, 651 N.E.2d 816, 820 (Tax Ct. 1995).

81. To the extent the Objectors are claiming the Council’s lack of participation constitutes a procedural defect, it is unclear whether this makes the Lease unnecessary or unwise. As stated above, the Department cannot consider a procedural defect, by itself, as the sole basis for rejecting a Lease. Therefore, contrary to the Objectors’ claim Department does not find that the Council was not involved in the Lease process.

Objection #2: Formation of Building Corporation

82. The Certificate of Incorporation for the Building Corporation, filed with the Secretary of State’s Office, states that the incorporation was effective on November 20, 2023. *County Exhibit 14*. The Lease executed between the County and the Building Corporation is dated December 1, 2023. *County Exhibit 1*. The Council Resolution states that the Council approves a lease between “a building corporation” and the County. *County Exhibit 10*.

83. The Objectors’ claim appears to be that the Council’s Resolution somehow manifests the Lease before November 20, when the Building Corporation was formed, or December 1, when the Lease itself was executed. The Objectors do not explain how the Building Corporation’s formation after the Council Resolution is problematic. They simply assert that it is problematic. The Department, however, must look at what each of the documents say, not what they do not say. The Resolution states that the Council approves entering into the Lease. It does not state that the County signs or executes the Lease. The Certificate of Incorporation states that the Building Corporation was formed on November 20, 2023. The Lease states that it was executed between the County and the Building Corporation was formed on December 1, 2023. Therefore, the Department finds that the Building Corporation was formed prior to the Lease.

84. The Department does not believe the Building Corporation’s formation relative to the Council Resolution is relevant. What is relevant is its formation relative to the execution of the Lease. The Lease execution occurred several days after the date of the Certificate of Incorporation. Finally, to the extent the Objectors are claiming the timing of the Building Corporation’s formation constitutes a procedural defect, it is unclear whether this makes the Lease unnecessary or unwise.

85. Therefore, the Department cannot find the Lease is invalid due to when the Building Corporation was formed.

Objection #3: Environmental Concerns

86. The Department believes the Objectors’ concerns about potential environmental effects of construction of the new jail in the Sunnymede neighborhood in Fort Wayne is grounded in the claim the Lease is unwise, especially as it relates to unanswered questions about wetland delineation, illegal dumping, and the prior use of the area.

87. The Department, as a tax agency, is not competent in environmental matters and declines to consider such claims better suited for agencies such as IDEM, the EPA, or the Army Corps of Engineers. The Department may consider relevant evidence, including decisions or determinations made by other administrative agencies, but does not have expertise on environmental matters. The Department is not going to inject itself into a process being

undertaken by one or more state or federal agencies regarding matters to which the Department is not competent or able to evaluate on its own.¹²

88. Therefore, the Department declines to consider this objection further.

Objection #4: Housing Out-of-State Inmates in Jail

89. According to the Petition, the Objectors claim the Lease does not prevent the new jail from being used to house out-of-state or out-of-county detainees, such as when the County had a contract with the USMS. *Testimony of Jorge Fernandez, video recording of hearing at 0:21:07*. The Objectors did not elaborate on how this makes entering into the lease unnecessary or unwise. The Department infers that, because the Lease lacks a restriction on the use of the jail site to house non-County detainees, that the Objectors believe the new jail would not solve the problem of overcrowding.

90. The Department did not receive any evidence that the County was going to resume accepting non-County detainees once the new jail is built. The Lease itself does not speak to the receipt of non-County detainees, or any other matter concerning the operation or use of the new jail.¹³ Because no evidence has been presented substantiating the claim, the Department is not going to consider this objection further.

Objection #5: Use of Property Tax as Backup and Controlled Projects Statutes

91. The Lease document indicates that sources of payment for lease rentals are as follows, in order of application:

1. The adjusted gross income tax in the County for correctional facilities and rehabilitation facilities in the County under Ind. Code § 6-3.6-6-2.7.
2. Legally available revenues appropriated for such purpose in an amount not to exceed \$5,925,000, including a portion of revenues from the economic development component of the additional revenue derived from the expenditure rate under Ind. Code 6-3.6-6 (“County Revenues”).
3. An ad valorem tax levied on all taxable property in the County pursuant to Ind. Code § 36-1-10-17, “to the extent that the Jail LIT revenues and the county revenues are insufficient to pay such amounts.”

¹² See *Bell*, 651 N.E.2d at 820 (stating that not presuming the legitimacy of other agencies’ actions “would be wasteful duplication of effort in the work assigned to agencies” and that “non-expert administrative agencies would pass judgment on decisions made by expert agencies, thereby circumventing the reason for expert agencies in the first place”).

¹³ Several Objectors claimed that the Lease includes vague terms regarding the details of the project. *Testimony of Jorge Fernandez, video recording of hearing at 0:21:07*; *Testimony of Tina Hughes, video recording of hearing at 52:32*. The Objectors did not specify what terms were vague or how they were vague.

The Lease also states that the County shall apply all available jail LIT revenues and “reasonable[sic] expects to use a portion of the County Revenues.” *County Exhibit 1.*

92. Baker Tilly provided two fiscal reports to the Commissioners, one on November 29, 2021 (“November 2021 report”), and another on October 25, 2023 (“October 2023 report”). *County Exhibits 25 & 26.* The November 2021 report analyzes the financing of a new jail using either a jail LIT or property tax as the main funding mechanism. The report indicates that, assuming a \$300,000,000 estimated project cost, a 20-year payment period and \$17.7 million in annual payments, a jail LIT rate of 0.2% would generate approximately \$21,618,000 a year, with an annual impact of \$56-\$235 for income earners between \$30,000 to \$125,000. Baker Tilly estimated the overall cost using the jail LIT to be \$300,815,000. By contrast, funding the project at the same total cost over the same period using property tax would have an annual cost of \$22.57 million, and a total overall cost of \$383,745,000, with an annual tax impact of about \$16 to \$79 (without taking into account circuit breaker impact), or \$17.70 to \$87.50 (if the project was approved in a referendum) for homes valued between \$75,000 and \$175,000.¹⁴ *County Exhibit 25.*

93. The October 2023 report analyzes the financing of the new jail exclusively based on the jail LIT, imposed at a rate of 0.11%. This report illustrates the amortization of \$235,915,000 in principal to finance the project, after application of \$15 million in American Rescue Plan Act funds and \$30 million from the County General Fund, with LIT collections starting in 2024. In the first scenario, bonds are issued at current interest rates plus 0.25% (from 3.70% to 4.55%), while the second scenario assumes bonds issued at current interest rates plus 1% (from 3.45% to 5.30%). In both scenarios, a 0.11% jail LIT is expected to generate \$16,295,000, and \$5,925,000 will be applied annually from the County’s EDIT revenue. *County Exhibit 26.*

94. In the first scenario, lease rentals will increase from \$8,829,000 in 2024, to \$9,631,000 in 2025 and 2026, and between \$19,581,000 to \$19,595,000 starting in 2027. The report indicates the balance of jail LIT revenue after payment of lease rentals per year will be \$500,000 in 2024 to 2026, and between \$2,630,000 to \$2,640,000 starting in 2027. In the second scenario, lease rentals will increase from \$10,694,000 in 2024, to \$11,666,000 in 2025 and 2026, and between \$21,159,000 to \$21,162,000 starting in 2027. The report indicates the balance of jail LIT revenue after payment of lease rentals per year will be \$500,000 in 2024 to 2026, and between \$1,058,000 to \$1,062,000 starting in 2027. *County Exhibit 26.*

95. Ind. Code § 6-1.1-20-1.1(a)(1) provides that a project is uncontrolled (that is, not subject to a petition and remonstrance or a referendum) if “the political subdivision reasonably expects to pay (A) debt service; or (B) lease rentals; from funds other than property taxes.” The Department finds that the County was presented with a fiscal analysis from Baker Tilly indicating the fundability of lease rentals with the adopted jail LIT with higher than current

¹⁴ This report also illustrated the property tax impact for 100 acres of agricultural land (with a base rate of \$1,290 per acre), between \$135 and \$138, and commercial properties valued at \$100,000, between \$105 and \$107. This report also assumed the project is subject to a tax referendum, a PTRC allocation of 6.4147%, a homestead credit of 7.1316%, and application of the homestead standard, supplemental homestead, and mortgage deduction.

(as of October 2023) interest rates, which Mr. Cloud described in testimony as the “worst case scenario.” *Testimony of Christopher Cloud, video recording at 1:57:27*. The County also provided testimony that the property tax backup is included as a “safety net” and a common practice to ensure marketability of the bonds. *County Exhibit 2; Testimony of Mark Crandley, video recording at 1:39:10; Testimony of Jason Semler, video recording at 1:44:57*.

96. In addition, the Lease is structured so that local income tax revenues will be used before a property tax levy, which according to the Lease will be used “to the extent that the Jail LIT Revenues and the County Revenues are insufficient to pay such amounts.” *County Exhibit 1*. The Department therefore finds that the County reasonably expects to pay the lease rentals using funds other than property taxes, based on the structure of the Lease and the analysis done by Baker Tilly, especially in the October 2023 report.¹⁵

97. Ind. Code § 6-1.1-20-1.1(a)(1) goes on to state that “[a] project is not a controlled project even through the political subdivision has pledged to levy property taxes to pay the debt service or lease rentals if those other funds are insufficient.” Therefore, by virtue of this provision, and contrary to the Objectors’ contentions, the fact that the Lease provides for a property tax levy as a backup source of funding the lease rentals does not make the jail project a controlled project.¹⁶

98. Ind. Code § 6-1.1-20-1.1(a)(5) provides that a project is uncontrolled if it “is in response to a court order holding that (i) a federal law has been violated; and (ii) the project is to address the deficiency or violation.” The Department doubts that this provision exempts the jail from a referendum. Based on the structure of this provision, it appears that the exemption only applies if the court order holds both (1) federal law has been violated and (2) the project is to address the violation. The federal court order did not hold that the new jail addresses the violation, though it contemplates a new jail as one solution. *County Exhibit 29*. However, because Ind. Code § 6-1.1-20-1.1(a)(1) applies to this project, it is not necessary to even consider the applicability of Ind. Code § 6-1.1-20-1.1(a)(5) in this case.

99. Therefore, the Department finds that the Lease is not subject to a referendum because it is exempt under Ind. Code § 6-1.1-20-1.1(a)(1).¹⁷

¹⁵ The Department believes Ind. Code § 6-1.1-20-1.1 requires only the political subdivision to determine whether its expectation to pay debt service or lease rentals to be “reasonable.” Therefore, Mr. Fernandez’s question in his “Appendix C” must be answered in the affirmative. See Objectors Exhibit D. The Department’s finds here that the County has a reasonable expectation, without questioning whether the expectation is in fact reasonable.

¹⁶ Ironically, because Ind. Code § 36-1-10-14(c) provides that taxpayers may remonstrate against a lease “[i]f the lease rentals are payable, in whole or in part, from property taxes,” had the Lease not included the property tax backup, the Objectors would not have a statutory right to remonstrate against it.

¹⁷ Even if a project is subject to a referendum, a referendum is not automatic. Ind. Code § 6-1.1-20-3.5(b) provides that, after a preliminary determination to pursue a project is adopted by the political subdivision, taxpayers in the political subdivision must petition to request a referendum. Under Ind. Code § 6-1.1-20-3.5(b)(11), failure to file a petition for a referendum allows the project to continue. A political subdivision may still pursue a referendum even without a taxpayer petition. See Ind. Code § 6-1.1-20-3.7.

Objection #6: Lease is a Debt for Purposes of the Constitutional Debt Limit

100. Article 13 of the Indiana Constitution provides that indebtedness in excess of 2% of the assessed value of taxable property in the political subdivision is void.¹⁸ As cited to by the County, the Indiana Supreme Court in *Book* and *Teperich* considered lease purchase arrangements as being outside this constitutional debt limit provided the payments are fair and reasonable. The Objectors do not allege that the Lease payments are unfair or unreasonable, except with respect to an excessive but undefined tax burden.¹⁹ Similarly, the County has not provided evidence the Lease payments are fair and reasonable. The Lease does not include an amortization schedule, which according to County testimony is because no bids have yet been received for the construction of the new jail. However, the County has estimated an annual lease rental of \$22.2 million. *Testimony of Christopher Cloud, video recording at 2:01:09; County Exhibit 26*. The Department must presume the estimated lease rentals, but their accuracy may be affected by changes in the bond market or the economy more broadly, changes in law, or delays in the project, itself.

101. What the Objectors alleged, and the County responded to, was that the Lease was a debt. The Objectors did not provide any evidence that, assuming the Lease was a debt, such indebtedness is void because it violates the constitutional debt limit. One of the Objectors, Mr. Collentine, provided a comparison of the per bed cost of the County's new jail compared to jails build in other counties. *Objectors Exhibit O*. However, a comparison of the per bed cost does not necessarily correlate to the annual lease rentals paid for the new jail compared to the jails in other counties. The Objectors have not provided evidence that the County's purported annual lease rental of \$22.2 million will be excessive relative to the lease rentals for other counties.

102. Therefore, for lack of evidence from either the Objectors or the County, the Department cannot find that the lease rentals are unfair and unreasonable, and the Department cannot find that the Lease constitutes an indebtedness for purposes of the constitutional debt limit.²⁰

¹⁸ Ind. Const. Art. XIII § 1.

¹⁹ In contrast to the County's estimated total cost of the project at \$318 million, Mr. Fernandez claimed that the overall cost of the project will ultimately be \$444 million based on the time-value of money. Testimony of Christopher Cloud, video recording at 1:57:27; Testimony of Jorge Fernandez, video recording of hearing at 2:23:03. Whether or not these estimates are accurate, the Department cannot regard these estimates, by themselves and without evidence of comparable lease rentals, as indicating the lease rentals are unfair or unreasonable.

²⁰ The Department also does not find Mr. Fenton's distinction of this situation from the ones in *Book* and *Teperich* compelling. See Objectors Exhibit T. First, as discussed below, Ind. Code § 36-1-10-12 permits the leasing of existing County property for a lease purchasing agreement. It is also unclear how such an arrangement creates the distinction Mr. Fenton alleged. Finally, the Department cannot engage in the same extensive legal analysis that a court of competent jurisdiction can. The Department can only consider whether the County has determined a lease does not constitute a debt, which it has done so through references to *Book* and *Teperich*.

Objection #7: Use of Courthouse as Collateral

103. Ind. Code § 36-1-10-12(a) provides that the political subdivision, as leasing agent, may, “in anticipation of the acquisition of a site on which a structure is to be constructed . . . enter into a contract to lease a structure from the lessor before the actual acquisition of the site and the construction . . . of the structure.” The statute goes on to say that, if a new structure is built, lease rentals may not be paid until completion, but that “the lease may provide for payment of lease rental for any part of the structure to be used by the political subdivision . . . during improvement, remodeling, or expansion of the structure.”

104. The Department finds that the County has leased the Courthouse to avoid capitalizing interest accrued during construction and reduce the overall lease rentals, which is a prudent action. While the Objectors may have concerns about using the existing Courthouse as collateral, they did not provide evidence that doing so was imprudent. Some objectors, such as Mr. Fernandez and Mr. Fenton, claimed leasing the Courthouse was a means of circumventing laws against unnecessary leases. No evidence was provided that such intent existed when the Lease was being drafted, and no argument was made that makes a logical connection between leasing the Courthouse pursuant to Ind. Code § 36-1-10-12(a) and actual circumvention of laws protecting against unnecessary leases, which were not clearly identified.

105. Therefore, the Department does not find imprudent the County’s lease of the Courthouse for purposes of funding the new jail.

Lack of Consideration of ACRAJ’s Alternative Plan

106. The Petition references at several points the objection that the County did not consider the Alternative Plan proposed by ACRAJ, but not as a standalone objection. The Department will, however, treat it separately from the others.

107. With respect to the Alternative Plan proposed by ACRAJ and supported by the Objectors, the Department must give deference to County in reliance on the Elevatus Study. The Department does not have expertise on jail design or planning. Therefore, it cannot evaluate whether building a jail based on the Elevatus Study will alleviate the conditions of the detainees, which the Objectors deny. At the same time, the Department cannot also evaluate whether building the jail based on ACRAJ’s proposal is a better alternative, as the Objectors contend, and should have been taken over that of Elevatus. Neither Objectors nor the County provided evidence the Alternative Plan was vetted by a third party, although the plan was apparently submitted to the federal court for consideration and was rejected.²¹

108. The evidence provided to the Department indicates that the County was required by federal court order to alleviate violations of detainees’ constitutional rights. *County Exhibits 28 & 29*. While the court order did not mandate a particular action, it mentioned, among other options, construction of a new jail. *County Exhibit 29*. The County so responded by hiring an architectural firm, Elevatus, to conduct a feasibility study for a new jail, in

²¹ Ms. Hughes claimed that the Alternative Plan was provided to the court, although no details were given. Objectors Exhibit R. The County claimed that the court declined to consider the plan. County Exhibit 2.

accordance with Ind. Code § 36-1-8-19.²² This study includes the feasibility of regional jail or outsourcing options; three projections of jail population up to and including 2050, using three different methods; and evaluation of alternatives including (1) horizontal expansion to surrounding sites, (2) vertical expansion, (3) regional jail and outsourcing options, and (4) a new jail at a new site. *County Exhibit 27*.

109. In reliance on the Elevatus Study, the County decided to build a new jail at a location suitable for it, the address of which was referenced in the petition filed by County taxpayers requesting a lease to finance the jail's construction. *County Exhibits 9, 27, & 28*. The County then hired Baker Tilly as a financial advisor, who provided reports in 2021 and 2023 indicating financing mechanisms for a new jail. *County Exhibits 25 & 26*. In reliance on Baker Tilly's reports, the County decided to finance the jail through a lease purchase and paid for with a jail LIT and other revenues. *County Exhibit 1*. The County has proceeded to seek permits with the appropriate environmental agencies for the jail site. *Testimony of Laura Maser, video recording at 1:46:47; Testimony of Christopher Cloud, video recording at 1:52:24*. The County provided testimony that the Alternative Plan and other options would not be adequate to address the County's need to comply with the court order. *Testimony of Mark Crandley, video recording at 1:26:13; County Exhibit 2*.

110. The Department therefore finds that the County pursued the Lease option in reliance on experts and with consideration of how to comply with the court order. The Department is not going to second guess the judgment of the County in rejecting the Alternative Plan.

Other Matters Pertaining to the Lease

111. Objectors also raised other claims not explicitly made in the Petition but were included in testimony and post-hearing statements. Although Ind. Code § 36-1-10-14(f) specifies that the Department must make a decision "on the objections presented in the petition," the Department will briefly address below other claims made by the Objectors.

Alleged Non-Compliance with Ind. Code § 36-1-10-7(c)

112. Both Mr. Fenton and Mr. Collentine claimed that the Lease is invalid because there apparently was not a petition filed pursuant to Ind. Code § 36-1-10-7(c). *Objector Exhibits J & P*. The County provided the Department with a copy of the County Auditor's Certificate, dated November 16, 2023, indicating that 91 "owners of taxable real estate" requesting the Lease. Attached to this certificate are five counterparts of a petition indicating a request that the County pursue this Lease, with signatures, names, and addresses of the signatories. *County Exhibit 9*. Therefore, the Department does not find that the County did not comply with Ind. Code § 36-1-10-7(c).

²² Ind. Code § 36-1-8-19 requires a feasibility study before the construction or reconstruction of a jail and a public hearing on the study. It also imposes requirements on what the study: (1) the feasibility of housing inmates from another county or in a multicounty jail; (2) a projection of future jail needs and estimates of the number and characteristics of future inmates; (3) the estimated costs, tax rates, and debt service that would result from each of the alternatives. It does not expressly require who conducts the study. Therefore, the Department declines to consider whether the County should have had an "independent" study done.

Conflict of Interest Claim

113. The Department will also not entertain claims that there exists a conflict of interest between Elevatus and the County. The statements that Elevatus made campaign contributions were simply asserted, and the Objectors provided no evidence of such contributions having been made.

Public Access Counselor Handbook Definition of “Public Agency”

114. The Public Access Handbook cites to the definition of “public agency” for purposes of the Open Door Law (“ODL”).²³ *Objectors Exhibit U*. Ind. Code § 5-14-1.5-2(a)(4) includes a building corporation in the definition of “public agency.” As the Public Access Handbook states, “this guide sets forth the basic elements of the ODL,” which it describes earlier as “permit[ing] the public access to meetings held by public agencies.” *Objectors Exhibit U*. As with environmental and jail issues, the Department will not step into the shoes of the PAC and attempt to interpret public access laws. Mr. Fernandez’s claim that the Building Corporation would be considered a “public agency” for purposes of the ODL is not relevant to the Lease; neither he nor the other Objectors provided any evidence that the Building Corporation has not followed the ODL, let alone whether that means the Lease is unnecessary or unwise.

Contracts Clause

115. Similarly, Mr. Fernandez’s claim about a potential Contracts Clause violation has not been substantiated, nor is the Department capable of evaluating any such claims as it is not a federal entity and is not empowered by federal statute to do so.

Department Oversight of County’s Adherence to Laws Respecting the Lease

116. Finally, to Mr. Fernandez’s request in his “Appendix B,” the Department is evaluating the Lease pursuant to Ind. Code § 36-1-10-14. See *Objectors Exhibit G*. Any further review by the Department as to whether the County is complying with various laws regarding the Lease are outside the scope of this Order, which is to determine whether the claims in the Petition that the Lease is unnecessary or unwise is valid.

CONCLUSION

117. Taking all of the evidence presented to the Department regarding how the County plans to fund the project, the objections presented and the rebuttals put forth, the Department is not persuaded by the Objectors claims as stated in their petition. The County has executed a Lease that appears on its face to be funded by means that the County is empowered by statute to use. Therefore, the Department declines to depart from its usual deference to local control by questioning the wisdom of the execution of the Lease.

118. However, in its deference, the Department must presume the accuracy of the County’s claim that the annual lease rentals are estimated at \$22.2 million, as no amortization schedule was provided or even available during the Department review. The accuracy of the estimated

²³ Ind. Code § 5-14-1.5-1 et seq

lease rentals may be affected by changes in the bond market or the economy more broadly, changes in law, or delays in the project, itself. The Department does not expect that the County will be unable to adapt to fulfill its obligations in the Lease.

119. The Department finds that the Lease is necessary and wise in light of the federal court order finding that constitutional violations exist in the current jail and directing the County to correct these violations, The County demonstrated it seeks to comply with the court order through a lease purchase agreement to build a new jail, payable through local income taxes and a potential property tax levy, with annual rental payments the Department does not find to be unreasonable or unfair. Moreover, the County has demonstrated that it has taken steps to minimize the tax burden of this Lease, including leasing the Courthouse for the first three years and using a property tax backup. The objections against the Lease notwithstanding, the Lease is necessary and wise.

120. Consequently, the Department hereby **DENIES** the Petition against the Lease.

121. Per Ind. Code § 36-1-10-14(e), this Order is **FINAL**.

122. Per Ind. Code § 36-1-10-15, an action to contest the validity of the Lease, or to enjoin performance under the Lease, must be brought within thirty (30) days after the date of this Order.

123. The Department notes that it is exempt from the Administrative Orders and Procedures Act (Ind. Code § 4-21.5-2-4).

Dated this 22 day of February, 2024.

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