

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

**IN THE MATTER OF THE PETITION )**  
**FOR REVIEW ALLEGING ARTIFICIAL )**  
**DIVISION OF A CONTROLLED ) CP019-002**  
**PROJECT BY DEKALB COUNTY )**  
**CENTRAL UNITED SCHOOL DISTRICT )**

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1. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 provide that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. A controlled project is, with some exceptions, any project financed by bonds or a lease that will cost a political subdivision more than the lesser of \$5,170,000 or an amount equal to 1% of the total gross assessed value of property within the political subdivision on the last assessment date, if that amount is at least \$1,000,000. IC 6-1.1-20-1.1.

2. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 also provide that a person that owns property within a political subdivision or a person that is a registered voter residing within a political subdivision may file a petition with the Department of Local Government Finance (“Department”) objecting that the political subdivision has artificially divided a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. The petition must be filed not more than ten days after the political subdivision makes the preliminary determination to issue the bonds or enter into the lease for the project. If the Department receives such a petition, it must, not later than 30 days after receiving the petition, make a final determination on the issue of whether the capital projects were artificially divided.

3. On September 21, 2019, Tina Alley, who owns property within the jurisdiction of DeKalb County Central United School District (“District”), submitted a petition (“Petition”) to the Department alleging that following a failed property tax referendum in May 2019 on a proposed project, the District began a “listening tour.” She went on to state that at the end of this tour, on July 23, 2019, the school board of the District (“School Board”) passed out a facility needs plan which separated out the projects into 3 groups for completion in 0-2 years, 2-5 years, and 5-10 years, and which would be funded by bonds totaling over \$33 million. Ms. Alley claimed this is “artificially dividing up a failed referendum into separate projects where the [District does] not have to face another referendum.”  
*Petition.*

4. The Petition contained the following supplemental documents:

- School Board Work Session document, “Facility Needs,” dated July 23, 2019.
- Renovation & Improvement Proposals for the District, provided by the District as information pertaining to the May 2019 referendum. (“Renovation & Improvement Proposals, May 2019”)

*Petition.*

5. On September 25, 2019, the Department contacted counsel for the School Board, Erik Weber, requesting a response to the Petition. *E-mail from David Marusarz to Erik Weber, September 25, 2019, 3:26 p.m. EDT.*

6. The School Board, through counsel, provided a letter in response to the petition. In this letter, the School Board explained the proposed project in question is for renovations for James R. Watson Elementary School (“Watson Elementary Project”). The project includes cafeteria expansion, courtyard renovation, and other renovations, and is to be funded by a general obligation bond (“G.O. bond”) in a principal amount not to exceed \$4,950,000. *Letter from Jane Herndon to David Marusarz, October 8, 2019; E-mail from Erik Long to David Marusarz, October 8, 2019, 5:02 p.m., with attachments (“District Response Letter”).* This letter also contained the following attachments:

- Exhibit A: Excerpts of minutes and resolutions from the preliminary determinations hearings held for the Referendum Project by the School Board on April 17, 2018 & May 31, 2018. Specifically, Exhibit A contains the following:
  - Minutes of Regular School Board Meeting, April 17, 2018.
  - Minutes of Special School Board Meeting, May 31, 2018.
  - Resolution approving projects for which the May 2019 referendum was held, dated May 31, 2018.
  - Preliminary determination to enter into bonds for referendum projects, May 31, 2018.
  - Declaration of Official Intent to Reimburse Expenditures, dated May 31, 2018.
- Exhibit B: Renovation & Improvement Proposals for the District pertaining to the May 2019 referendum. (“Walk-Thru Data”)
- Exhibit C: Current versions of 1028 resolution and preliminary bond resolution with respect to the Watson Elementary Project which were adopted by the School Board on September 17, 2019. Specifically, Exhibit C contains the following:
  - Excerpts from minutes of the September 17, 2019, meeting of the School Board.
  - September 17, 2019, School Board resolution approving the Watson Elementary project.
  - September 17, 2019, School Board resolution making a preliminary determination on the bond to fund the Watson Elementary project.
  - September 17, 2019, School Board resolution declaring intent to reimburse expenses.

This letter also contains four arguments for why the Watson Elementary Project has not been artificially divided. *District Response Letter.*

7. The School Board first contends that the Watson Elementary Project does not fall within the definition of “controlled project” in IC 6-1.1-20-1.1 because its total cost is less than \$5,170,000, which is the minimum threshold a project cost has to reach before the project must be approved by the taxpayers. IC 6-1.1-20-1.1(2)(A)(iii). Specifically, there is only one bond issuance with a maximum amount of \$4,950,000. Moreover, the project consists of “individual items which clearly have independent value with desirable ends in themselves, regardless of whether any future capital improvements are made, including the expansion of the cafeteria and kitchen, and the renovation of the courtyard space.” *District Response Letter, p. 2.*

8. Second, the School Board argues that the Watson Elementary Project is not substantially similar to the Referendum Projects because the Referendum Projects included multiple projects at multiple facilities, whereas the current proposed project concerns only James R. Watson Elementary. In addition, only 11% of the cost for the Referendum Projects were devoted to James R. Watson Elementary. *District Response Letter, p. 2; Renovation & Improvement Proposal, May 2019.*

9. Third, the School Board argues that for the May 2019 referendum it intentionally combined a number of individual projects to be packaged in one referendum. This is stated to have been done in accordance with Department guidance. *District Response Letter, p. 3.*

10. Finally, the School Board states that the Walk-Thru Data is a “long-range, district-wide facilities plan, not an artificial division of a single project.” *District Response Letter.* The Walk-Thru Data lists specific needs for each facility, including extra-curricular and co-curricular facilities, prioritized as “High,” to be completed within 0-2 years, “Medium,” 2-5 years, or “Low,” within 5-10 years. The School Board contends that this shows the District recognizes multiple projects that “may or may not be chosen for funding – through bonds, leases, Operations Fund dollars, and other sources – over approximately the next ten years.” *District Response Letter, p. 3* (emphasis in original).

### FINDINGS OF FACT

11. The Petition includes a document that can be described as a “Renovation & Improvement Proposal” which the District used in 2018 and early 2019 to present to the taxpayers the estimated impact of the proposed Referendum Project. *Renovation & Improvement Proposals, May 2019.* The first part of this document contains a pie chart showing the breakdown of estimated project costs, by school and by need. For example, for James R. Watson Elementary, \$454,000 is dedicated to courtyard renovations and \$3,033,250 for cafeteria and kitchen work, representing 1% and 8% of the total cost, respectively. *Renovation & Improvement Proposals, May 2019, p. 1.* The second page shows another pie chart showing the breakdown of “hard construction costs,” “soft construction costs,” capitalized interest, and costs of issuance, but not tied to a particular school or subproject. *Renovation & Improvement Proposals, May 2019, p. 2.* The third page shows a bar chart illustrating the annual debt service tax rate from 2018 through 2033, particularly the effect on the rate if the Referendum Project was approved. *Renovation & Improvement Proposals, May 2019, p. 3.* The last two pages list the individual projects for each school facility, summarized as follows:

- Watson Elementary School: Constructing a new, larger cafeteria and kitchen; renovating the enclosed courtyard into useable educational space.
- DeKalb Middle School: Installing lighting, flooring, and wall finishes to areas that were last improved more than 15 years ago.
- DeKalb High School: Replacing boilers.
- Field renovation and other site improvements for the athletic complex, including new canopies, security call boxes, field lighting, new fieldhouse, new sidewalks, and new sewer and drainage systems.

*Renovation & Improvement Proposals, May 2019, pp. 4 & 5.*

12. The other Petition attachment, “Facility Needs,” was presented to taxpayers to show the Walk-Thru Data described above. *Facility Needs, pp. 2-11.* This document also contains in its last page a form by which taxpayers can provide feedback about the proposals.

13. At the April 17, 2018, School Board meeting, the District Superintendent, Stephen Teders, presented the Referendum Project to the Board. According to his presentation, the Referendum Projects included “new synthetic turf surfaces on the football field, the practice band and football field, soccer field, softball and baseball fields; construction of a fieldhouse; additional practice areas; new lighting; a new press box at the football field; relocation of the home football bleachers facing east; and renovated new restrooms. Also replacing the boilers at the high school, interior renovations

at the middle school, which would include lighting, flooring and wall covering; and renovating the enclosed courtyard and the relocation and enlarging the cafeteria at James R. Watson Elementary School.” *District Response Letter, p. 8, Exhibit A.* The Referendum Projects were then approved by the School Board via resolution on May 31, 2018. *District Response Letter, pp. 20-23, Exhibit A.*

14. On September 17, 2019, the School Board held a meeting to discuss proposed renovations at James R. Watson Elementary, including “cafeteria expansion, courtyard expansion, and other renovations.” The School Board explained the details of the Watson Elementary Project to attendees, but it is not known from the minutes how it was described. *District Response Letter, pp. 39-40.* The School Board then adopted a resolution to approve the project. The resolution states the estimated costs of the project to be \$4,950,000, to be funded by “Operations Fund money and/or a G.O. bond issue with an anticipated gross impact on the Debt Service Fund tax rate of \$0.1615 per \$100 assessed valuation,” but going on to say that because of existing debt rolling off, the tax rate increase is expected to be zero. *District Response Letter, p. 42, Exhibit C.* The School Board also adopted a preliminary determination to issue a G.O. bond with a principal amount not to exceed \$4,950,000, the proceeds of which would be used to pay for the Watson Elementary Project. *District Response Letter, pp. 44, 46, Exhibit C.*

15. The District also provided the graphs contained in the Petition, as well as the Walk-Thru Data for all the District facilities. *District Response Letter, pp. 25-37, Exhibit B.* The Walk-Thru Data lists four data fields for each facility: Description of project (shown as a need); whether it has been completed or, if not completed, its priority; the funding source; and the completion date. Among funding sources, it includes General Obligation Bonds, Deferred Maintenance Bonds, Operations Fund levy, food service revenue, construction warranties, Rainy Day Fund, grants, donations, other various sources, and in some cases a funding source has not been determined. *District Response Letter, pp. 28-37, Exhibit B; Facility Needs, pp. 2-11.* Regarding James R. Watson Elementary, among the items listed as having “High” priority include the courtyard, condiment tables, freezer replacement, cafeteria and kitchen expansion, outdoor storage expansion, all of which had an unknown funding source as of July 19, 2019. Other high priority items were listed as being paid from the Operations Fund or from a security/safety G.O. bond. *Facility Needs, p. 5.*

## ANALYSIS

16. The petition argues that the School Board had divided all of the referendum projects. Indiana Code 6-1.1-20-3.1(c) and 3.6(j) state that a petition may only be submitted after a preliminary determination from a school corporation on a project. As of the date of this Order, the School Board had only adopted a preliminary determination on the Watson Elementary Project. *District Response Letter, pp. 44, 46, Exhibit C.* Under IC 6-1.1-20-3.1(c) and 3.6(j), the petition is premature as to any other proposed projects of the District. Therefore, the Department will only address the petition as it concerns the Watson Elementary Project.

17. A political subdivision shall be considered to have artificially subdivided a controlled project “if the result of one (1) or more of the subprojects cannot reasonably be considered an independently desirable end in and of itself without reference to another capital project.” I.C. 6-1.1-20-3.1(c); 6-1.1-20-3.6(j).

18. The Department agrees with the School Board that a project with a cost of \$4,950,000 by itself would not qualify as a controlled project under IC 6-1.1-20-1.1. However, that assumes what is at issue: whether the Watson Elementary Project has been artificially divided from the larger District-

wide project. Hence, the Department will need to determine whether the Watson Elementary Project is independently desirable without reference to any of the other District project. The School Board contends that it is.

19. The School Board goes on to argue that the Watson Elementary Project is limited to only one school building, whereas the Referendum Projects concerned multiple projects at multiple facilities. On its face, this argument assumes that the School Board had not artificially divided the Referendum Projects to go forward with the single Watson Elementary Project. However, this is related to the School Board's fourth argument below, and so will not be dismissed outright.

20. To the School Board's third argument, the Department acknowledges that multiple projects can be combined into one proposal to put before the voters in a referendum. While that does not mean that every project packaged with other projects in a referendum can subsequently be broken off and presented as an individual proposal, not every project so packaged and then separated from other projects is inherently artificially divided. The Department must consider, then, whether the project is independently desirable.

21. The Department finds the School Board's fourth and last point most compelling. The Walk-Thru Data for each facility details the needs for each school facility, the priority of that need, and the expected revenue sources for each need. This data shows that each facility's needs are specific to that facility. While there is some overlap in needs between facilities, such overlap is foreseeable since school buildings tend to follow a similar design and characteristics. Even so, the courtyard and cafeteria renovations listed for the Watson Elementary Project are not found among the listed items for any of the other facilities, especially as being funded by a G.O. bond. Likewise, projects for the other facilities do not involve renovations for courtyards or cafeterias. It follows from this that none of the other projects, either for James R. Watson Elementary or at other facilities of the District, have any bearing on the renovations of the cafeteria or the courtyard.

22. Therefore, the Department determines that the Watson Elementary Project is an independently desirable end without reference to another project of the District. If, for example, the District represented to the taxpayers that the cafeterias and enclosed outdoor spaces for all the school buildings were to be renovated, and the District represented that each would be a stand-alone project, even taking place at different times, then it is easier to say that the renovations would be one project which the District artificially divided. That is not what the facts here show. Moreover, that the District's recent referendum was unsuccessful does not mean that the Watson Elementary Project, which was part of the original referendum project plan, is part of an artificially divided project.

23. Therefore, pursuant to IC 6-1.1-20-3.1(c) and IC 6-1.1-20-3.6(j), the Department finds that the District has not artificially divided a controlled project at James R. Watson Elementary to avoid the petition and remonstrance or referendum processes under their respective statutes.

Dated this 21<sup>st</sup> day of October, 2019.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

  
Wesley R. Bennett, Commissioner