

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 PROJECT) CP22-003
BY TOWN OF CEDAR LAKE, LAKE COUNTY)

FINAL DETERMINATION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Ind. Code §§ 6-1.1-20-3.1 and 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.

2. Ind. Code §§ 6-1.1-20-3.1 and 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 gives notice of 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.¹

3. 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 \$5,815,445 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. Ind. Code § 6-1.1-20-1.1; [Department Nonrule Policy Document #2021-1](#). Generally, a controlled project with a cost that exceeds \$5,815,445 is subject to the statutory requirements for a petition and remonstrance or, if the cost is greater than \$17,446,334, the referendum process. Ind. Code §§ 6-1.1-20-3.1 & 3.2; Ind. Code §§ 6-1.1-20-3.5 & 3.6; [Department Nonrule Policy Document #2021-1](#).

¹ The 30-day deadline is subject to Ind. Code § 6-1.1-1-25, which provides that a deadline imposed on the Department that does not fall on a business day is moved to the first business day after the stated deadline.

4. For purposes of the artificial division petition received by the Department, a town is a political subdivision. Ind. Code § 6-1.1-1-12.

RELEVANT PROCEDURAL HISTORY

5. On October 26, 2022, Kevin Toth submitted a petition to the Department (“Petition”). The petition stated that Mr. Toth is a property owner and registered voter residing within the Town of Cedar Lake (“Town”). *Petition.*

6. Mr. Toth claims in the Petition the following:

- A capital project proposed by the Town “was initially presented as a combined facility to save money and keep the project under 11.9 million dollars.”
- The project was presented at meetings as a single, joint facility, with a single structure not to exceed \$11.9 million dollars in cost.
- The project was described in the adopted resolution as “a split facility 11.9 million for Fire and 6.5 million for police.”
- The financing in the budget, as represented in the Town Council’s work session, was “for a single facility for 11.9 million dollars.”
- In the July 19 meeting, the facility was mentioned to have a cost of \$12 million dollars. The design was presented “to bring ‘the two groups together under one roof,’ ‘with a tight budget’ . . . the shared building was designed and designed for growth of the community . . . they were given a ten million dollar budget.”
- In the September 6 Town Council meeting, the payment for the “Public Safety Building” survey was approved and there was also mention of a \$11.9 million budget. At this meeting “the Town attorney once again mentions the financial aspect of this project being 11.9 million dollars. They have had drawings prepared with both entities under one roof.”
- The Town’s advertisement for the October 18 meeting was the first mention of there being two projects or separate facilities.
- “This was put out publicly as a combined facility with a not to exceed 11.9 million dollar budget. This was done to keep the project from a referendum. When they found they could not fund this project at 11.9 million or never really intended to keep the price at 11.9 million they have moved to this new or alternate plan.”

Petition.

7. Mr. Toth attached the following documents to the Petition:

- A copy of Town Council Resolution No. 1321, unsigned but dated October 19, 2022 (“Resolution 1321”).
- A copy of Professional Services Agreement with Krull-Abonmarche, dated September 2, 2022, with project location being named as “Cedar Lake Public Safety Building.”
- A copy of Town Council agenda for the September 6, 2022, public meeting.
- A copy of a floor plan and architectural design plan for the proposed Public Safety Center (“Center”).
- Page 6 of 9 of a copy of the Town Council July 19, 2022, minutes.
- A screenshot of a Youtube video entitled “Town Council Special Work Session – 2023 Budget – September 27, 2022.”²

Petition.

8. On October 26, 2022, the Department notified the Town Clerk-Treasurer that it received the Petition and requested additional information. *E-mail from Department to Jennifer Sandberg, Town Clerk-Treasurer, October 26, 2022, at 4:01 p.m.* On November 10, 2022, the Department received an e-mail from Chris Salatas, the Town manager, containing the Town’s response to the Petition. *E-mail from Chris Salatas to Department, November 10, 2022, at 3:20 p.m., with attachment.*

9. The Town’s response letter is summarized as follows:

- The Town has grown considerably over the last three (3) years in population and housing. Due to this extensive growth, the Town has had to deal with infrastructure. At the same time, public safety needs have substantially lagged behind community growth and needs. As a result of these needs, the Town Council determined that additional resources were needed for the Town police and fire departments.
- The police and fire departments are currently located in separate facilities. Each facility no longer adequately serves the current needs of the Town.
- In 2022, the Town retained Veridus Group (“Veridus”) to assess, develop, and provide a plan for new facilities. The Town states that Veridus reviewed 5 difference design concepts, ultimately settling at a 21,000 square foot facility to fall within the initial budget of \$10 million. This budget cap was later revised to \$11.9 million.

² The Petition and attachments did not contain the URL for the video the screenshot was pulled from. The video itself is available at this link: [Town Council Special Work Session - September 27, 2022](https://www.youtube.com/@TownofCedarLake). As of the date of this Order, the video remains available on the Town’s YouTube channel, <https://www.youtube.com/@TownofCedarLake>. The Department will make reference to this video below as “September 27 Special Work Session.”

- Veridus also recommended a build-operate-transfer (“BOT”) procurement process. Subsequently, the Town Council selected GM Development (“GM”) as a BOT provider in July 2022, following the necessary public meetings as required by law. GM was informed by the Town of the budget for the project. GM then secured a guaranteed maximum price contract to provide for the construction of the new facility. Both GM and the Town came to an understanding, publicly shared and expressed at public meetings, that the cost would be at or near the Town’s budget.
- Veridus Group informed the Town and GM that inflationary pressures and supply chain interruptions have increased the costs for construction of the new police and fire facility by approximately \$4 million, in addition to continuing shortages. At this time, the Town had not received a guaranteed maximum price from GM. Therefore, the Town Council changed the design to separate the police and fire facilities, once jointly, into 2 separate structures. The Town Council did this to allow for greater flexibility to delay or cancel one or both projects depending on economic conditions. The Resolution, in particular, states that the maximum price is “if both Projects are undertaken.”
- The Town Council attempted to move quickly with the preliminary determination in order to obtain advantageous financing before costs rise. GM informed the Town Council that costs would not significantly increase if the police and fire buildings are kept separate facilities “given the disparate and different needs of [each department].” The Town Council would have pursued the two facility project³ earlier had the Council had knowledge that costs were known to be higher.
- The costs for each project would be within the parameters of the petition/remonstrance process, and the Town Council was aware that taxpayers would have the ability to object to both buildings as much as they would have if the single facility project was pursued.

Town Response Letter.

10. The Town included with its Response the following documents:

- A copy of the Petition, marked as “Exhibit A.”
- A copy of Town Council Resolution No. 1320, dated October 17, 2022, marked as “Exhibit B.” (“Resolution 1320”)
- A copy of a letter from Veridus to Town Councilmember Randy Niemeyer, marked as “Exhibit C.” (“Veridus Letter”)

³ For clarity, the Department will refer to the initial planned single facility project as the “single facility project” or “Center project.” Likewise, the later proposed separate projects will be referred to as the “police project” or “fire project” if necessary.

11. Though neither Mr. Toth nor the Town provided it, the Department was able to obtain the Notice of Preliminary Determination (“Notice”), published by the Town in the *Northwest Indiana Times*, with respect to the two projects. Each project had its own notice. *Notice of Preliminary Determination to Enter into a Proposed Lease (Fire Department Project)*, published October 21, 2022; *Notice of Preliminary Determination to Enter into a Proposed Lease (Police Department Project)*, published October 21, 2022.⁴

12. Additional facts and information will be included below, as appropriate.

FINDINGS OF FACT

13. The Department finds that the Town made a preliminary determination to enter into a lease to finance two projects. The first project is to provide facilities for the fire department at a cost of \$11.9 million. The second project is to provide facilities for the police department at a cost of \$6.5 million. The Notices were published on October 21, 2022. *Notices*.

14. The Notices stated that property owners and registered voters within the Town can initiate a petition and remonstrance process against the proposed lease under Ind. Code § 6-1.1-20-3.1. *Notices*.

15. Resolution 1320 states that that the purpose of both the police project and fire project is “for funding all or a portion of the design, construction, and equipping of a municipal public safety center to be located on existing Town-owned property . . . for the purpose of providing adequate facilities to locate either or both the police and fire departments of the Town.” It states that a petition was filed by one hundred and six (106) property owners in the Town securing a lease.⁵ It also states that the maximum costs of the police project and the fire project are \$6.5 million and \$11.9 million, respectively, but the maximum cost of both projects, when combined, is \$16 million. The Resolution was adopted by a vote of 5-0 on October 17, 2022. *Resolution 1320*.

16. The Veridus Letter states that initially, the plan was “to attempt to co-locate both the police and fire into one structure with the hope we would find efficiencies and cost savings,” with the acknowledgement that police and fire department have two different uses and so are not normally “co-located” in the same facility. The Letter states that if the uses were split into two separate structures, each structure would be more efficient for the respective departments and “not increase costs over the realized \$16MM cost.” The Letter adds that “[b]y separating the two uses into two separate structures, we have been able to better met the Owner Project Requirements for both user groups while maintaining the overall costs for the Town to a max. of \$16MM.” There is no date indicated on the letter. *Veridus Letter*.

⁴ Both notices were obtained from the Hoosier State Press Association’s Indiana Public Notices website, www.indianapublicnotices.com, last accessed October 26, 2022.

⁵ Ind. Code § 36-1-10-7(c) requires a petition by at least fifty (50) taxpayers in order for a local unit to enter into a lease on a capital project.

17. Therefore, the Department finds that the cost of each project, when only one of them is pursued, would be \$11.9 million for the fire project and \$6.5 million for the police project. However, when both projects are pursued together, even with the two structure plan, the Town expects the overall cost to be no more than \$16 million.

18. Resolution 1321, as provided by Mr. Toth in the Petition, was not signed or dated, and there is no indication of a vote on the Resolution. The Resolution states that the police project will be financed through “Series A Bonds” issued by the Town of Cedar Lake Building Corporation (“Building Corporation”). Likewise, the fire project will be financed through “Series B Bonds” also issued by the Building Corporation. Both bond series will be payable by property tax. The Resolution also provides a table listing the debt service levy and rate for each project for the next ten (10) years, but includes a provision that the debt service levy and rate applies to each project “if the Town enters into the Lease with respect to” each project. The Resolution also states that after publication of notice of this preliminary determination, property owners or registered voters within the Town may file a petition to initiate a petition and remonstrance process under Ind. Code § 6-1.1-20-3.1. *Resolution 1321.*

19. Therefore, the Department finds that the Town intends to issue separate series of bonds to finance the lease with respect to each project, and that repayment of the bonds will be primarily through property tax, but the Town has made each project contingent on other considerations.

20. The Department also finds that the Town has acknowledged both projects are subject to the petition and remonstrance process under Ind. Code § 6-1.1-20-3.1. The Department has not received evidence that a petition to initiate this process was filed.

21. The design layout and floor plan show that the layout of the public safety center is a single one-floor structure with areas separately dedicated to police and fire use. The Department has not received designs or floor plans of the separate facilities, should the Town pursue that separate facility plan. The Veridus Letter describes the separate facility plan as follows:

- Police Building: 7,180sf @ approx. \$5.2MM (NTE \$6.5MM)
 - We were able to increase efficiency as well as the SF of this building over the co-located structure providing a structure built with future growth in mind.
- Fire Department: 14,555sf @ approx. \$10.5MM (NTE \$11.5MM)
 - We were able to increase efficiency while actually removing some overall SF from this structure while still providing benefits of growing the Cedar Lake FD for future needs of the community.

Veridus Letter.

22. The Krull-Abonmarche Professional Services Agreement, as provided in the Petition, has the project location highlighted and reads “Cedar Lake Public Safety Building.” The Agreement is dated September 2, 2022. *Professional Services Agreement.*

23. On July 19, 2022, representatives from Veridus presented to the Town Council at a public meeting the current design plan of the proposed Center. The Center was described as having “shared” amenities, among other things. The Center was proposed to be located at the corner of Constitution Avenue and Morse Street on a 1.7 acre space. The cost of the project was stated to be approximately \$8.2 million to \$8.8 million in hard costs (labor and materials), and an

additional 35% attributed to soft costs (insurance, fees, and furnishings), which was later described as below the median price range. The Veridus representative explained that there is a fixed budget on the project and there has been continual conversations about the cost. *Video of July 19, 2022, Town Council Meeting at 1:28:36 – 1:46:06⁶; Minutes of the July 19, 2022, Town Council Meeting.* The location of the Center was also described as facilitating public needs on the east side of the Town which is growing faster than other areas. *Video of July 19, 2022, Town Council Meeting at 1:47:36 – 1:48:32.* Town Council President Randy Niemeyer stated the target budget was at \$10 million when the initial talks about the project were held. *Video of July 19, 2022, Town Council Meeting at 1:51:04.* The Town Council approved both the public safety center design. *Video of July 19, 2022, Town Council Meeting at 1:52:50.*

24. At the July 19 meeting, the Veridus also presented to the Town Council a potential BOT agreement with GM wherein GM would give a guaranteed maximum price on the Center project. The Council approved Veridus proceeding with the BOT. *Video of July 19, 2022, Town Council Meeting at 1:59:15.*

25. The screenshot of the Town Council September 27, 2022, Work Session that was posted on YouTube suggests that the Town is seeking “additional levy adjustments for 2023” including the following:

- Filing for a \$1M Extension of Services Levy Appeal (Civil Levy)⁷
 - Large Assessed Value increases allow for levy appeal with minimal impacts to residents, primarily due to circuit breaker credit impacts
 - In addition, tax rate has dropped from \$0.8063 to \$0.5663 from 2017 to 2022
 - In 2022, Town established Park District as oversight to Park planning
 - Levy appeal is to fund the approximate \$1M Park Budget
- Issuing \$11.9M of 2022 Lease Rental Bonds (Debt Levy)
 - To fund Public Safety Facilities Project
 - Town has outgrown current public safety facilities in addition to the current facilities aging and becoming inadequate
 - Assuming a 15-year bond at 5.5%, an approximate \$1.185M levy will be required

Petition; September 27 Special Work Session at 12:06 – 15:50. The Department finds that the Town Council presented at a public meeting the intent to seek an “additional levy adjustment” by issuing a bond in the amount of \$11.9 million to pay lease rentals for the proposed public safety facility project. This bond would be repaid out of the Town’s “debt levy”⁸ at approximately \$1.185 million annually.

⁶ Available at this link: [Town Council Meeting - July 19, 2022.](#)

⁷ The extension of services levy appeal is pursuant to Ind. Code § 6-1.1-18.5-13(a)(1) and is outside the scope of this Order.

⁸ This is likely a reference to a debt service fund levy. Local units that issue bonds or enter into leases typically pay those obligations out of a debt service fund. Under Ind. Code § 6-1.1-18.5-8(a), a tax levy to repay obligations on bonds or long-term leases are exempt from maximum levy limits under Inc. Code 6-1.1-18.5 that are imposed on the local unit.

26. On September 6, the Town Council discussed and approved a scoping agreement with GM for estimating a guaranteed maximum price for the project as a precursor to entering into a contract on the proposed public facility project. During discussion, the \$11.9 million cost was mentioned. *Video of the September 6, 2022, Town Council Meeting at 30:59 – 34:36⁹; Minutes of the September 6, 2022, Town Council Meeting.*

27. As of the date of this Order, the Department is not aware of any petition filed with the Lake County voter registration office pursuant to Ind. Code § 6-1.1-20-3.1 to trigger a petition and remonstrance process against the Town's proposed lease.

28. The Department is also not aware of any petition filed with the Lake County voter registration office pursuant to Ind. Code § 6-1.1-20-3.5 to trigger a referendum process against the Town's proposed lease.

ANALYSIS

29. Ind. Code §§ 6-1.1-20-3.1(c) and 3.6(j) state that a controlled project is artificially divided when the result of one (1) or more of the subprojects cannot reasonably be considered an independently desirable end in itself without reference to another capital project. This a fact-sensitive inquiry. The Department makes its determinations on a case-by-case basis in reliance on the applicable law and facts.

30. The Department recognizes that the lease the Town plans to use to finance these projects came about as a result of taxpayer petitions filed under Ind. Code 36-1-10. The Department also recognizes that the Town acknowledges that the police project and fire project are controlled projects and subject to the petition and remonstrance project under Ind. Code § 6-1.1-20-3.1. The issue here is whether the Town has artificially divided a single project in order to avoid the lease for the projects to be subject to the referendum process under Ind. Code § 6-1.1-20-3.6.

31. There is no dispute that the initial Center project was to build a single facility that would accommodate both police and fire protection uses, but that when Resolutions 1320 and 1321 was adopted in October, the project plans had changed to involve separate buildings for the respective departments. There is also no dispute that the purported cost for the fire project is \$11.9 million and the police project is \$6.5 million when taken separately. However, Resolution 1320 and the Veridus Letter provide that the maximum aggregate total of the projects, if both are undertaken, is \$16 million. This is under the \$17,446,334 threshold that makes the projects subject to a referendum. Even if the Town pursued both projects, based on the assumption given by Veridus that splitting the projects would lower the overall combined cost, the threshold for triggering a referendum would not be met.

32. Generally, the Department considers the treatment of two separate projects affecting the same facility as constituting artificial division of a controlled project. The reason is because it is more difficult to discern how modifications or design functions of one part of the facility

⁹ Available at this link: [Town Council Meeting - September 6, 2022.](#)

affected by one project would be seen by a reasonable observer as having an independently desirable end from that of another part of the facility affected by another project. Here, however, Resolution 1320 indicates that there will be two separate projects but not necessarily of the same facility, as shown by the Veridus Letter. The floor plans showing the single facility project was presented at the July 19, 2022, Town Council meeting. The Notices and both Resolutions indicate that there are two separate projects, without specific reference to one or more facilities being built or renovated.

33. The Department will not place great weight on the statements in the Resolution, and as stated in the Town's response, that the overall cost of the projects will still be under the threshold to trigger a referendum if the Town decides not to pursue the police project. The Town adopted the resolutions stating that it intends to pursue both projects and provided notice to the taxpayers of the same. Even if one of those projects does not pan out, it stifles the taxpayers' ability to object to a controlled project if the unit claims one or more of the planned projects is provisional or contingent and should not count as part of the cost threshold, therefore the trigger for a referendum would not be met, anyway.

34. With the information provided regarding the separate facilities, the police department and the fire department will have separate dedicated buildings specific to their respective uses. It is unknown where these facilities would be located or how they would be configured. Even if each facility is dedicated to a specific use, other aspects of the projects such as walkways, parking, and landscaping may apply to both projects. Without more, it is expected that such costs would fall under the \$16 million limit imposed by Resolution 1320.

35. Therefore, the Department concludes that the Town has not artificially divided a project into multiple projects to avoid the referendum process under Ind. Code §§ 6-1.1-20-3.5 and 3.6. The initial single facility project was to house both the Town's police and fire departments into a single building with two or more uses. Later, the Town determined that due to increase in labor and construction cost, it was more efficient to separate the projects into separate facilities. Each facility would have needs specific to the police and fire department, respectively. Both of these projects are subject to the petition and remonstrance process under Ind. Code §§ 6-1.1-20-3.1 and 3.2.

36. The Department reminds the Town, however, that if the Town decides only to pursue the fire project now and puts off the police project at a later time, the latter project may be subject to a referendum under the provisions of Ind. Code § 6-1.1-20-3.5(a)(1)(C) if the project is sought within a year of the fire project and the cost of both exceeds \$25,000,000.

37. The Department emphasizes that the determination of whether a controlled project has been artificially divided is very fact-sensitive and the Department reserves the right to make that determination on a case-by-case basis in reliance on the applicable law and facts.

Dated this 23rd day of November, 2022.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner