

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

IN THE MATTER OF THE PETITION)	
OBJECTING TO THE ESTABLISHMENT)	OBJ 23-001
OF CUMULATIVE CAPITAL DEVELOPMENT)	& C23-090
FUND BY FLOYD COUNTY)	

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana law allows the participating units of a fire protection territory to establish or re-establish a cumulative capital development fund (“Fund”) pursuant to Ind. Code 36-9-14.5 and Ind. Code 6-1.1-41.
2. Twenty-five (25) or more taxpayers may object to a county’s proposed Fund establishment. The Department is not required to conduct a hearing on the objection unless the petition expressly alleges by reasonable statements of fact that the County failed to comply with the procedural requirements under (1) Ind. Code 6-1.1-41; (2) Ind. Code 5-3-1; or (3) Ind. Code 36-9-14.5. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund.
3. This Order is a response to a petition filed by at least 25 taxpayers within Floyd County (“County”) objecting to the tax rate for the County’s proposed Fund, which is one type of cumulative fund governed by Ind. Code 6-1.1-41.
4. Since at least 25 taxpayers in the County filed a petition objecting to the establishment of the Fund alleging the County failed to comply with procedural requirements to establish the Fund, the Department conducted a public hearing on the taxpayers’ objection petition.
5. For the reasons stated below, the Department **APPROVES** the County’s proposed Fund establishment and **MODIFIES** the adopted rate for the Fund.

RELEVANT PROCEDURAL HISTORY

6. The legislative body of a county may establish or reestablish a Fund under Ind. Code 6-1.1-41 to provide money for any purpose for which property taxes may be imposed within the county under the authority of:

- Ind. Code § 3-11-6-9 (Voting System Purchase Fund);
- Ind. Code 8-16-3 (Cumulative Bridge Fund);
- Ind. Code 8-16-3.1 (Major Bridge Fund);
- Ind. Code § 8-22-3-25 (Local Airport Authorities);
- Ind. Code § 14-27-6-48 (Levee Authority in Vanderburgh County);
- Ind. Code 14-33-14 (Cumulative Maintenance Fund);
- Ind. Code § 16-22-8-41 (Cumulative Building Fund);
- Ind. Code 36-9-14 (Cumulative Building Fund for County Courthouse);
- Ind. Code 36-9-15 (Cumulative Building Fund, Sinking Fund, and Debt Service Fund for Certain Law Enforcement Purposes);
- Ind. Code § 36-9-16-2 (Cumulative Building or Sinking Fund and Cumulative Capital Improvement Fund);
- Ind. Code § 36-9-16-3 (Cumulative Capital Improvement Fund);
- Ind. Code § 36-9-27-100 (Cumulative Drainage Fund); or
- Ind. Code § 36-10-3-21 (Cumulative Building Fund).

Ind. Code § 36-9-14.5-2.

7. To provide for the Fund, a county fiscal body may levy a tax on all taxable property within the county in compliance with Ind. Code 6-1.1-41. The maximum property tax rate that may be imposed for property taxes first due and payable during a particular year in a county wholly or partially located in a county in which the local option income tax is in effect on January 1 of that year is \$0.0167 if the county has not previously imposed the tax. If the county has previously imposed the tax for one or more years, the maximum property tax rate is \$0.0333. Ind. Code § 36-9-14.5-6(b).

8. As explained in Ind. Code § 36-9-14.5-6(a), the establishment of a Fund is also governed by Ind. Code 6-1.1-41, which sets forth the procedures for establishing cumulative fund tax levies, of which a cumulative capital development fund is a type.

9. Notice of the County's proposal to establish its Fund was given to the affected taxpayers in the *News and Tribune* on May 10 and May 18, 2023. *Copy of May 10, 2023 edition of News and Tribune, page B4; copy of May 18, 2023 edition of News and Tribune, page B5, retrieved from www.indianapublicnotices.com (last accessed August 30, 2023)* (hereafter "Public Notices"). Ind. Code § 6-1.1-41-3(a).

10. On either May 23 or May 24¹, the County held a public hearing and adopted an ordinance establishing the proposed Fund. *Notice of adoption CCD Fund Affidavit of Publication* (hereafter “Notice of Adoption”); *Ordinance #4941* (hereafter “Ordinance”). Ind. Code § 6-1.1-41-3(a), (e).

11. On May 26, 2023, the County published a Notice of Adoption in the *News and Tribune*. Publication of this Notice triggered a 30-day remonstrance period. *Notice of Adoption Affidavit of Publication*. Ind. Code § 6-1.1-41-3(e).

12. A petition was filed by at least 25 qualified taxpayers objecting to the proposed Fund establishment. The objection petition was timely filed with the county auditor on June 23, 2023, and duly certified to the Department on the same date.²

14. The Department set the date for a public hearing on the objection petition for August 30, 2023, and timely mailed notice of the hearing to the county auditor and the first ten taxpayers whose names appeared on the petition. *Notice of Hearing to County Auditor; Notice of Hearing to Taxpayer*. Ind. Code § 6-1.1-41-7, 8.

15. The Department conducted a public hearing on August 30, 2023, on Microsoft Teams. David Marusarz, Deputy General Counsel for the Department, conducted the public hearing.³ *Department’s Notice of Hearing to County Auditor; Department’s Notice of Hearing to Taxpayer*. Ind. Code § 6-1.1-41-7.

16. The following testified at the hearing as opponents:

- Joseph Moore
- Elaine Jenkins
- Dennis Konkle
- Jim Freiburger
- Dale Mann

17. The following testified at the hearing on behalf of the County:

¹ The Public Notices state that the hearing was to be held on May 23. The Ordinance states that the hearing was held on May 23 and adopted on May 24. The Notice of Adoption, however, states that the Ordinance was adopted on May 23. As the objectors did not allege any defect, here, and there is no available evidence to the contrary, the Department will not consider the matter further.

² There were two petitions filed with the County Auditor. The one named “Dale Mann petition” contained a list of objections and handwritten names, addresses, and signatures. The other one, named “Christine Albro petition” was a printout taken from www.change.org, an online petition website, and contained a statement of objections and names of 145 different individuals who “signed” the petition electronically. There is associated with each individual a date of signature and a purported state, city, and postal code claimed by each individual (most but not all claim to be from Indiana). Most individuals did not provide an address. As the Dale Mann petition showed that there were twenty-five (25) taxpayers in Floyd County, the Department relied on that petition alone for purposes of the remonstrance and the taxpayers’ objections. Therefore, unless otherwise stated, all references to a petition and objections will be to the Dale Mann petition.

³ The hearing was audio recorded on Microsoft Teams. The recording is available at the Department’s Indianapolis office for inspection and copy.

- Al Knable, President of the Board of County Commissioners (“Board”)
- Matt Frische, Financial Advisor, Reedy Financial Consultants (“Reedy”)
- Rick Fox, County Attorney
- Denise Konkle, President of the County Council (“Council”)
- Tim Stricker, Financial Advisor, Reedy

18. Following the hearing, additional written statements were provided by the following objectors:

- Christine Albro
- Sonia Randall
- Paul Ash
- Jana Stacy
- Robin Warneke
- Jeff Mills
- Brandi Brown
- Mark Ernstberger
- Roseanna Dennison
- Everett Stephens
- Shelli Crabtree
- Kasandra and Carl Ramsey
- Mark Stull
- Jim Freiberger
- Michael O’Bryan
- Joseph Moore
- Dale Mann

19. Following the hearing, additional written statements were provided Rick Fox, on behalf of the County.

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

- Objectors’ Exhibit 1 – Written statement of Carol Lamb & George Mouser, received by e-mail on August 27, 2023, 8:03 p.m.
- Objectors’ Exhibit 2 – Written statement of Dennis Welch, received by e-mail on August 29, 2023, 2:49 p.m.
- Objectors’ Exhibit 3 – Written statement of John Denison, received by e-mail on August 29, 2023, 2:49 p.m.
- Objectors’ Exhibit 4 – Printout of December 12, 2022, edition of *News & Tribune*, pages A1 & A3, with handwritten notes.
- Objectors’ Exhibit 5 – Minutes of Joint Meeting of County Commissioners and County Council, February 17, 2023, first page only.
- Objectors’ Exhibit 6 – Portion of Presentation by Reedy for December 8, 2022, meeting entitled “Building Project Analysis.”

- Objectors' Exhibit 7 – Commissioners Resolution FCR2023-05, March 7, 2023.
- Objectors' Exhibit 8 – Letter from Reedy to Commissioners and Council, April 11, 2023, with handwritten notes.
- Objectors' Exhibit 9 – Council Resolution 2023-00, May 9, 2023, with handwritten notes.
- Objectors' Exhibit 10 – Fund Adoption Ordinance FCO2023-15, May 24, 2023.
- Objectors' Exhibit 11 – Written statement of James Freiberger, received by e-mail on August 29, 2023, 1:53 p.m.
- Objectors' Exhibit 12 – Written statement of Lois Hertog, received by e-mail on August 30, 2023, 1:49 p.m.
- Objectors' Exhibit 13 – Video of June 6, 2023, Commissioners Meeting⁴.
- Objectors' Exhibit 14 – Video of April 21, 2023, Joint Meeting.

21. Following the hearing, Objectors submitted additional written testimony by e-mail, listed under the following exhibits, also part of the Record:

- Objectors' Exhibit 15 – Statement of Joseph Moore, September 13, 2023, 2:14 p.m.
- Objectors' Exhibit 16 – Statement of Mark Stull, August 31, 2023, 2:46 p.m.
- Objectors' Exhibit 17 – Statement of Roseanna Dennison, August 31, 2023, 11:14 a.m.
- Objectors' Exhibit 18 – Statement of Everett Stephens, August 31, 2023, 12:07 p.m.
- Objectors' Exhibit 19 – Statement of Shelli Crabtree, August 31, 2023, 1:43 p.m.
- Objectors' Exhibit 20 – Statement of Kasandra & Carl Ramsey, August 31, 2023, 2:28 p.m.
- Objectors' Exhibit 21 – Statement of Mark Ernstberger, August 31, 2023, 3:21 p.m.
- Objectors' Exhibit 22 – Statement of Brandi Brown, September 1, 2023, 9:25 a.m.
- Objectors' Exhibit 23 – Statement of Jeff Mills, September 1, 2023, 1:17 p.m.
- Objectors' Exhibit 24 – Statement of Robin Warneke, September 2, 2023, 6:20 a.m.
- Objectors' Exhibit 25 – Statement of Jana Stacy, September 2, 2023, 10:41 a.m.
- Objectors' Exhibit 26 – Statement of Paul Ash, September 3, 2023, 6:21 p.m.
- Objectors' Exhibit 27 – Statement of Sonia Randall, September 4, 2023, 8:54 a.m.
- Objectors' Exhibit 28 – Statement of Christine & Charles Albro, September 4, 2023, 1:46 p.m.
- Objectors' Exhibit 29 – Statement of James Freiberger, September 6, 2023, 1:43 p.m.
- Objectors' Exhibit 30 – Statement of Michael O'Bryan, September 8, 2023, 8:04 p.m.
- Objectors' Exhibit 31 – Statement of Charles Mann, September 13, 2023, 11:16 a.m.

22. Proponents presented the following exhibits, which are thus part of the Record:

- Proponents' Exhibit A – Fund Adoption Ordinance FCO2023-15, May 24, 2023.
- Proponents' Exhibit B – Notice of Adoption.
- Proponents' Exhibit C – Letter of Scott Stewart, New Albany-Floyd County Building Authority, to the Board, May 30, 2023.

⁴ Retrieval at <http://floydcoin.suiteonemedia.com/Web/Player.aspx?id=1414&key=-1&mod=-1&mk=-1&nov=0> (last accessed September 21, 2023).

23. The Department recognizes the following items as part of the Record:

- (1) The Hearing Procedures Script for the August 30 hearing.
- (2) The Hearing Record of Evidence for the August 30 hearing.
- (3) A digital video recording of the August 30 hearing.
- (4) Floyd County Commissioners Ordinance.
- (5) Objectors' Petition, filed June 23, 2023.

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

SUMMARY OF THE PARTIES' CONTENTIONS

A. Summary of Objectors' Contentions

24. The objection petition stated the following objections:

- 1) The Board failed to publish a proper Notice of Adoption by citing to a "general code provision listing a large and varied list of potential capital projects for which a [Fund] levy may be imposed." The Board, however, made it clear at the May 23 hearing that the purpose of the Fund is for the renovation of the City-County Building or acquisition or construction of a new justice center, or both. The Notice of Adoption did not provide any other description of the capital project, depriving taxpayers and the public of any actual notice.
- 2) The proposed Fund levy is premature because the Board does not have a plan for the funds involving a new justice center.
- 3) The Board has a history of overspending and should live within their means. The County sold the county hospital for less than half of its value to balance its deficit-spending budget and prematurely voted to approve the unfinished sale contract. The Board also continues to spend excessively by allocating county vehicles to multiple employees and using taxpayer funds to pay for commuting expenses.
- 4) The sale of the county hospital has given the county sufficient funds to cover the costs of the justice center.

Objection Petition; Certificate of Auditor. Ind. Code § 6-1.1-41-6(4).⁵

25. In addition to what was stated in the first objection, the Objectors argue that because the Notice of Adoption states that the purpose of the Fund is "[f]or all uses as set out in IC 36-9-14.5", the purpose of the Fund is not specific to the judicial center project but can be used for any purpose listed in Ind. Code 36-9-14.5. The Objectors state they are

⁵ The Christine Albro petition contained a brief statement of the four objections made in the Dale Mann petition.

also concerned that the cumulative fund will not have a sunset or expiration date. *Testimony of Joseph Moore; Objectors' Exhibits 1, 12, 15, 17 - 20, 22, 23, 27, 28, 31.*

26. With respect to the second objection, the Objectors argues that the County should not raise taxes unless there is a plan and budget in place for the judicial center project. *Testimony of James Freiberger; Testimony of Joseph Moore; Objectors' Exhibits 12, 17 - 20, 22 - 24, 26 - 28, 30.* One Objector also claimed the County rejected a request for an efficiency study. *Objectors' Exhibit 31.* Objectors also argue there has been a lack of transparency about the tax, with some alleging the County of changing the need for the tax from a city-county building to a judicial center. *Objectors' Exhibits 17 - 20, 22 - 24.*

27. With respect to the third objection, again in addition to the general statement in the Petition, the Objectors state that the County currently has a \$1.8 million deficit following an investment referred to as "Novaparke."⁶ *Objectors' Exhibits 1, 11, 31.* The Objectors also claim the County has mismanaged their funds and have focused on wants rather than only on their needs.⁷ *Testimony of Joseph Moore; Testimony of Dennis Konkle; Objectors' Exhibits 2, 3, 21, 28, 31.* The Objectors also claim the County has continued to expand or duplicate services and thereby creating inefficiencies; for example, separating both its parks & recreation department and other services from their counterparts with the City of New Albany. *Objectors' Exhibits 1, 15.* Some Objectors also state their concern about the tax burden due to the Fund, which is on top of already existing tax increases due to the recent increase in property tax assessments and a recently imposed local income tax. *Testimony of Elaine Jenkins; Testimony of Dennis Konkle; Testimony of Charles Mann; Objectors' Exhibits 2, 3, 16, 20, 24, 27.*

28. With respect to the fourth objection, Objectors state the County has not been open about the use of proceeds from the sale of the Floyd County Hospital. *Testimony of Charles Mann; Objectors' Exhibits 2, 11, 30, 31.* One Objector said the proceeds totaled \$150 million and could have been used for repairs. *Objector Exhibit 31.* Another Objector said using \$3.5 million of hospital proceeds will reduce the tax rate. *Objector Exhibit 11.* Objectors also argue other sources of revenue, such as the County's reserve funds, riverboat revenue, and money from the federal American Rescue Plan Act should be considered. *Testimony of Charles Mann; Testimony of James Freiberger; Objectors' Exhibits 2, 3.*

29. The Objectors also argue that a \$35 million bond proposed by the County is unnecessary, and that it is possible to keep bonds below \$18 million. *Testimony of James Freiberger; Objectors' Exhibit 11.* The Objectors also state the revenue from the Fund would not fully support the annual debt service on the bonds. *Testimony of James Freiberger; Objectors' Exhibits 8, 11.*

⁶ Neither Objectors nor the County explained what Novaparke was or is, although some of the Objectors described this investment as "questionable" and lacking in transparency. *Objectors Exhibits 1, 31.*

⁷ Some Objectors also make other statements regarding other services provided by the County unrelated to the judicial center project, alleging secrecy, deception, and corruption on the part of unnamed county officials. *Objectors' Exhibits 23, 25, 26, 30.*

30. The Objectors finally claimed that requests were made to the County to hold a referendum on the project, which the County refused because it would not be successful. *Testimony of James Freiberger; Objectors Exhibits 30, 31.*

B. Summary of Proponents' Contentions

31. The County first stated that its establishment of the Fund met all of the legal requisites and was a proper exercise of the Board's authority under Indiana law. *Testimony of Rick Fox.*

32. With respect to the first objection, the County responded that the notice of adoption was worded in a manner compliant with state law, and no evidence has been provided that the law requires a specific purpose be stated. *Testimony of Al Knable; Testimony of Rick Fox.* The County then stated this Fund came about as part of a several year-long process for the judicial center, it would have been clear what the specific purpose for the tax revenue was and there was no intent to mislead taxpayers. *Testimony of Al Knable; Testimony of Rick Fox.* Specifically, the County stated that the judicial center project began in 2021 once it was known that the current courthouse would be closed due to code violations. *Testimony of Al Knable.*

33. With respect to the second objection, the County responded that the project is still in its early stages and developing a plan would be inappropriate without first knowing what revenues would be available to the County. *Testimony of Matt Frische; Testimony of Rick Fox.*

34. With respect to the third objection, the County responded by stating that overspending is a matter of opinion and not relevant. *Testimony of Rick Fox.* Specific to concerns about the tax burden, the County claimed that the current property tax rate is the eighth lowest in the state, and will only be the thirteenth lowest once the Fund tax rate is in place. *Testimony of Al Knable.* The County municipal advisor also claimed that a large majority of the state has been historically underassessed and, while the County's tax rate has been low, the recent increase in property taxes has been due to a change in statewide assessment practices. *Testimony of Matthew Frische.* At the same time, the County admits to a \$1.8 million deficit and the need to generate additional revenue. *Testimony of Matthew Frische; Testimony of Denise Konkle.* The County municipal advisor stated the Fund's purpose is to generate additional revenue, though based on estimates from engineers, the revenue from the Fund would still not meet the annual debt service needed. *Testimony of Matthew Frische.*

35. Upon questioning, the County municipal advisor stated that a debt service fund and a controlled project referendum fund were considered but rejected because it would actually have a higher tax rate compared to the Fund. *Testimony of Matthew Frische.* Responding to another question, the county attorney stated he did not know of any legal requirement that a property tax for the Fund being used to repay a bond is subject to a referendum. *Testimony of Rick Fox.*

36. With respect to the fourth objection, the County stated that the proceeds of the hospital sale have been used to maintain a stable tax rate. *Testimony of Denise Konkle.*

37. Upon further questioning, the County argued that a tax rate of \$0.0333 was adopted because that is the maximum allowed by statute and as recommended by the municipal advisor. *Testimony of Rick Fox; Testimony of Matthew Frische.* The County municipal advisor stated he was unaware that the County had not a levy for the Fund previously. *Testimony of Matthew Frische.* The County Council President later said the upcoming year's budget will be based on a \$0.0167 tax rate for the Fund. *Testimony of Denise Konkle.* The County also did not believe it is possible for a county to have a CCD fund and some other cumulative fund, the purpose of which can also be fulfilled with a CCD fund. *Testimony of Rick Fox.*

38. Other testimony or statements will be included below, as necessary.

ANALYSIS

39. The Department may not disapprove the establishment of the Fund except by a finding that the County did not comply with the procedural requirements of Ind. Code 6-1.1-41; Ind. Code 5-3-1; or Ind. Code 36-9-14.5. Ind. Code § 6-1.1-41-9(b).

40. The maximum allowable property tax rate for the Fund may not exceed one and sixty-seven hundredths cents (\$0.0167) per \$100 dollars of assessed valuation if a levy for the Fund was not previously imposed by the county. If a levy for the Fund was previously imposed by the county for one (1) or more years, the maximum allowable property tax rate is three and thirty-three hundredths cents (\$0.0333) per \$100 dollars of assessed valuation. Ind. Code § 36-9-14.5-6(b).

41. The Ordinance indicates that the Fund is being established. Testimony demonstrates that the County did not previously levy for the Fund, and the County is planning its upcoming budget as if there was no prior levy for the Fund. A memorandum from Reedy to the Board and Council also stated that, with respect to a potential Fund establishment, that the tax rate “will be set at half of max first year – will need to reestablish to max in 2024.” *Objectors' Exhibit 8.* As no evidence has been presented to the contrary, the Department finds that the County has never previously levied a property tax for a prior instance of the Fund.

42. The Department will proceed with each objection stated in the Petition.

Objection #1: Notice of Adoption was Defective

43. Evidence provided to or otherwise obtained by the Department shows that the County published the Public Notice two (2) times, one at least ten (10) days and the second at least three (3) days before the public hearing, with the notices at least seven (7) days apart, in compliance with Ind. Code § 6-1.1-41-3 and Ind. Code § 5-3-1-2(f). The Public

Notice was also published in the only newspaper of general circulation in Floyd County, in compliance with Ind. Code § 5-3-1-4. *Copy of May 10, 2023, edition of News & Tribune, page B4; Copy of May 18, 2023, edition of News & Tribune, page B5.* Following a public hearing purported to be on May 23, 2023, the Board, the legislative body of the County under Ind. Code § 36-1-2-9, adopted an ordinance establishing the Fund, setting out the maximum property tax rate, and the purposes of the Fund. A Notice of Adoption was published in the same newspaper in compliance with Ind. Code § 6-1.1-41-3 and Ind. Code § 5-3-1-2(i) within thirty (30) days after adoption. *Publisher's Claim from the News & Tribune, May 26, 2023.* Although the Objectors have not raised claims to the contrary, the Department finds that the County has complied with the above statutory publication and adoption timetable for the Fund.

44. The Objectors, rather, claim a procedural defect occurred in the way the Notice of Adoption was written and published. The notice states in part that the Board established the Fund “For all uses as set out in IC 36-9-14.5.”⁸ The Objectors allege that this is improper because of statements made by County officials indicating the sole purpose of the Fund is to finance the judicial center. The Objectors claim that despite this specific purpose, the Notice of Adoption indicates that the Fund can be used for any purpose identified in Ind. Code 36-9-14.5. See paragraph 6, above.

45. The basis of the Objectors’ claim is that the Notice of Adoption has misled the public about the true purpose of the Fund. Specifically, whereas the discussion has primarily been about the judicial center, the broad purpose set out in the Notice of Adoption indicates the County could at some point in the future continue to collect property taxes for other purposes for the Fund other than the judicial center.

46. The County’s response to this objection was that discussion about what the Fund would be used for, the financing of the judicial center project being the main purpose, was made at open public meeting and that the County had no intent to mislead or deceive taxpayers.

47. The Department is sympathetic to the Objectors’ concerns. Several Objectors stated the County was not exactly clear on the purpose of the Fund and how it would be taxed. Testimony from County representatives does suggest the County is not of one mind about its use. The Board President stated the priority was for the Fund to be used for the judicial center. *Testimony of Al Knable; Objectors’ Exhibit 13 at 1:05:00; Objectors’ Exhibit 15.* At the same time, the Council President also mentioned a lack of revenue for the judicial center. *Testimony of Denise Konkle.* The County municipal advisor also stated that the purpose of the Fund was to generate additional revenue, not necessarily revenue for a specific purpose, and it is possible that this will generate more than what is needed for the judicial center project. *Testimony of Matthew Frische.* The county attorney also claimed the County has “at least four viable purposes” for the Fund. *Testimony of Rick Fox.*

⁸ This statement was also included in the Ordinance, although the Objectors only made the claim with reference to the Notice of Adoption.

Admittedly, no one from the County denied the Fund would ever be used for the judicial center project.

48. The Objectors also cite a concern about the permanency of the Fund, as opposed to a specific debt service levy. In contrast to a debt service levy, which lasts for the duration of the underlying bond or lease, a levy for a cumulative fund is used to ‘accumulate’ tax revenue in said fund that is siloed off for statutorily-designated purposes, typically for capital improvements, even if those purposes are not yet realized. As such, the political subdivision is allowed to accumulate tax revenue in a cumulative fund until its officials decide the fund is no longer needed.⁹

49. The County also argued that that the ordinance as adopted complies with state law and that there is no legal requirement to cite to a specific project or purpose for the Fund. As support, the County cited to *Bd. of Comm’rs of Clark County v. Dep’t of Local Gov’t Fin.*¹⁰ In *Clark County*, the Department denied the adoption of a CCD fund following a taxpayer remonstrance under Ind. Code § 6-1.1-41-6. The Clark County Commissioners adopted an ordinance referencing the need to “create a mechanism by which the County’s reserve funds might be replenished,” a need which was confirmed by the county officials at the remonstrance hearing. *Bd. of Comm’rs of Clark County*, 31 N.E.3d at 558-9. The Department denied the fund on the grounds that on the face of the adopting ordinance, the fund would be used for a purpose not listed in Ind. Code § 36-9-14.5-2.¹¹ On appeal, the Tax Court affirmed the Department’s denial of the fund. *Id.* at 559-560.

50. Unlike in *Clark County*, the County, not only in its Notice of Adoption but in the Ordinance itself, explicitly cited to “all uses set out in [Ind. Code §] 36-9-14.5-2” as the purpose of the Fund. The Department cannot find that the County did not cite to a legal purpose of the Fund in either document. Among the several purposes that the Fund can be used for is the purposes described in Ind. Code § 36-9-14, section 2 of which provides in part “to provide money for the construction, remodeling, and repair of courthouses.” The reference to a “courthouse” rather than the more modern term “judicial center” notwithstanding, the Department finds that the County’s purported use of the Fund for the construction or remodeling of a judicial center meets the purposes described in Ind. Code § 36-9-14-7 and Ind. Code § 36-9-14.5-2. Therefore, the Department cannot find that the Notice of Adoption was improperly published.

⁹ Ind. Code § 6-1.1-41-11 provides that “[i]f a political subdivision considers it advisable after the levy has been approved, the governing body imposing the levy for the political subdivision may reduce or rescind the annual levy.” Furthermore, Ind. Code § 6-1.1-41-15 gives the political subdivision with a cumulative fund the ability to transfer the remaining balance of the fund once it “decides that the purposes for which the [cumulative] fund was established have been accomplished or no longer exist;” or “rescinds the tax levy for the [cumulative] fund.”

¹⁰ 31 N.E.3d 552 (Ind. Tax Ct. 2015).

¹¹ Ind. Code § 6-1.1-41-14 states in part that a cumulative fund “may not be expended for any purpose other than the purposes specified by statute authorizing the fund.”

Objection #2: Lack of a Plan for the Project or the Fund

51. The Objectors' also are concerned that the County is attempting to raise taxes through the Fund without any apparent plan for how to use them. The County responds that the judicial center project is still in the early stages and a plan is in development.¹²

52. As previously stated, the purpose of a cumulative fund is to generate revenue in anticipation of some future need. In addition, statements from the County suggest uncertainty whether the Fund is going to be used only for the judicial center, or for some other County needs, or just to generate revenue.

53. Indiana Code 36-9-14.5 does not require that a political subdivision develop a plan prior to establishing the Fund. Indiana Code § 36-9-14-7(b) states that, for a cumulative courthouse fund or a CCD fund, property tax revenue may be transferred to a nonprofit corporation that has a lease to maintain the courthouse, and the nonprofit corporation must then submit a plan to the county council for approval before it may spend that revenue. No evidence has been provided that the County intends to transfer Fund revenue to a nonprofit corporation for this purpose. Therefore, the Department cannot find that the County has not complied with the legal requirements for establishing the Fund by not developing a plan for the judicial center.

Objection #3: History of Overspending and Mismanagement

54. The third objection made is that the County has to live within its means and stop overspending. In response, the County said that overspending and mismanagement is a matter of opinion. *Testimony of Rick Fox*. The Objectors rebutted that the County is duplicating services and raising local income taxes to recover money.

55. As before, this objection is outside the scope of review under Ind. Code § 6-1.1-41-9(b) and therefore the Department cannot consider it further. The Department defers to the decisions of locally elected officials, especially one in which those officials have sought professional third-party consultation, and will not substitute its own opinion for those officials who have more information and resources to respond to local issues. Whatever can be said about the County's management of its resources to provide services, the Department does not have the authority to and cannot address it, here.

Objection #4: Not Dedicating Hospital Proceeds or Other Available Revenues

56. Some Objectors dispute the Board and Council's decisions regarding the judicial center project. Namely, deciding not to use proceeds from the hospital sale, or reserve funds, a design-build-operate agreement, or other means of financing the judicial center project that would not require a tax increase. As stated before, the Department is hesitant

¹² In addition to statements made at the hearing that the project is still in its early stages, the County provided a letter from the New Albany-Floyd County Building Authority, dated May 30, 2023, illustrating the timeline and changes made throughout the process and recommending a course of action before a final decision on the judicial center project is made. *Proponents' Exhibit C*.

to second guess a policy decision of locally elected officials. More importantly here, the Department is limited in its scope of review of a cumulative fund establishment by Ind. Code § 6-1.1-41-9(b) to whether procedural errors took place. While the Objectors may reasonably challenge the wisdom of the Board and Council's decisions with respect to the project and what revenues are dedicated to it, the Department has no statutory authority to overrule those decisions.

Other Matters Brought by Objectors

57. The Objectors' testimony also expressed a general concern about the increase in taxes. In response, the County first said the property tax rate is low compared to the rest of the state. *Objectors' Exhibit 8; Testimony of Al Knable*. The tax rate, which is one variable among several affecting tax liability, does not itself say much about the taxpayers' ability to pay. Property tax liability in Indiana is based on property wealth (see, e.g., Ind. Code § 6-1.1-2-3), and an individual's income does not factor into liability except where the law allows relief for some individuals.¹³

58. The County also responded that the state has been historically underassessed and recent increases in assessed values are due to a change in statewide practices. *Testimony of Matthew Frische*. This position was merely asserted and not supported by any evidence presented. The County did not provide any evidence of what the changes were in statewide practices, how such a change would have caused the increase in assessments, or the standard for determining what underassessment is.¹⁴ That said, the Department has no authority under Ind. Code § 6-1.1-41-9(b) to consider the potential tax burden a levy for the Fund would impose, and there cannot consider this matter.

59. Finally, according to the Objectors, the County chose not to pursue a referendum under Ind. Code 6-1.1-20 for the judicial center project because, as the Objectors allege, the referendum would likely fail. The County responded that a referendum debt service levy would actually impose a greater tax burden than from the Fund and so it was no longer considered.¹⁵ Indiana Code 6-1.1-20 subjects a project for which a political

¹³ For example, the Blind & Disabled Persons Deduction (Ind. Code § 6-1.1-12-11), the Over 65 Deduction (Ind. Code § 6-1.1-12-9) and Over 65 Circuit Breaker Credit (Ind. Code § 6-1.1-20.6-8.5). To be sure, the maximum levy growth quotient, which sets the ceiling by which political subdivisions can increase their levies, is determined by statewide nonfarm personal income. See generally Ind. Code §§ 6-1.1-18.5-2 & 3.

¹⁴ In addition, the statement about underassessments was made without demonstrating expertise of mass appraisal or property assessment. Specifically, the County's municipal advisor clarified upon questioning that he is not a state certified assessor-appraiser. *Testimony of Matthew Frische*. Certified assessor-appraisers are required to receive education, training and continuing education in mass appraisal practices. See generally Ind. Code 6-1.1-35.2 (laws regarding training for assessing officials); Ind. Code 6-1.1-35.5 (laws regarding assessor-appraiser examination and certification); Ind. Admin. Code tit. 50 art. 15. (Department rules on assessor-appraisers, professional appraisers, and tax representatives).

¹⁵ It is unclear whether state law requires a project to be subject to a referendum under Ind. Code §§ 6-1.1-20-3.5 & 3.6 if the property tax revenue for the project is deposited into and paid out of a cumulative fund. For purposes of Ind. Code 6-1.1-20, "property taxes" means "a property tax rate or levy to pay debt service or to pay lease rentals," excluding taxes allocated to redevelopment commissions. Ind. Code § 6-1.1-20-1.6.

subdivision may issue bonds or enter into a lease, and financed by property taxes, to a potential process voter and taxpayer approval, depending on the expected cost. For a project for which a notice of determination occurs in calendar year 2024, if the cost exceeds \$6,350,466 but not \$19,051,397, the project is subject to a petition and remonstrance. A project with a cost exceeds \$19,051,397, it is subject to a referendum. Ind. Code §§ 6-1.1-20-1.1, 3.5, & 3.6¹⁶.

60. Neither a petition & remonstrance nor a referendum are automatic in most cases. It is not uncommon for political subdivisions to initiate a property tax referendum as permitted by Ind. Code § 6-1.1-20-3.7. However, Ind. Code § 6-1.1-20-3.5 grants taxpayers and registered voters in the political subdivision the ability to hold a referendum on a project upon collection and timely submission of an adequate number of signatures. Per Ind. Code § 6-1.1-20-3.6(b)(11), the political subdivision may issue debt for a project if a petition from the public has not been successfully submitted.

CONCLUSION

61. In sum, the Objectors have not pointed to any purpose not permitted by statute that the County intends to use for the Fund. Objections related to mismanagement or lack of planning related to the judicial center project are outside the review the Department must employ with cumulative fund establishment remonstrances. These objections notwithstanding, the adoption of the Fund was properly and lawfully done.

62. However, as provided by Ind. Code § 36-9-14.5-6(b), the maximum allowable property tax rate for the Fund in the first year a property tax is levied for it is one and sixty-seven hundredths cents (\$0.0167). As such, the adopted rate of three and thirty-three hundredths cents (\$0.0333) exceeds the statutorily permitted tax rate.

63. Consequently, the Department hereby **APPROVES** the County's proposed Fund establishment and **MODIFIES** the tax rate as follows. The Department approves the levying of a tax in the amount of one and sixty-seven hundredths cents (\$0.0167) on each one hundred dollars (\$100.00) of assessed valuation for taxes payable in 2024 and thereafter until the rate is reduced or rescinded, subject to existing maximum levy limits under IC 6-1.1-18.5-3. Any levy previously established for this purpose is hereby rescinded.

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

65. Under Ind. Code § 6-1.1-41-9(c), this Order of the Department can be appealed to the Indiana Tax Court not more than forty-five (45) days after issuance of the Order.

To that end, "debt service" means "principal of and interest on bonds", and lease rental as "the payments required under a lease" by a political subdivision of any project. Ind. Code §§ 6-1.1-20-1.2 through 1.4.

¹⁶ The specific cost amounts are provided by the Department's Nonrule Policy Document #2023-1, published in the Indiana Register, pursuant to Ind. Code § 6-1.1-20-3.5(a)(1), on August 31, 2023.

Dated this 29 day of September, 2023.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

A handwritten signature in black ink, appearing to read 'D Shackle', is written over a horizontal line.

Daniel Shackle, Commissioner