

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

**IN THE MATTER OF PETITIONS OBJECTING)
TO THE INCURRENCE OF AN EMERGENCY) OBJ 20-001
FIRE LOAN BY WABASH TOWNSHIP,)
TIPPECANOE COUNTY)**

FINAL DETERMINATION

This is an Order of the Department of Local Government Finance (“Department”) regarding the above captioned matter. The Department has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Pursuant to IC 36-6-6-14(b), if the legislative body of a township finds that a need for fire and emergency services or other emergency exists, it may issue a special order, entered and signed on the record, authorizing the township trustee to borrow a specified amount of money sufficient to meet the emergency.
2. Indiana Code 36-6-6-14.5 allows ten or more taxpayers in the township who disagree with the special order to file a petition in the office of the county auditor not more than 30 days after notice of the special order is given. (“Petition”) The Petition must state the taxpayers’ objections and the reasons why the taxpayers believe the special order to be unnecessary or unwise. After a hearing on the objection and consideration of the evidence, the Department of Local Government Finance (“DLGF”) may approve or disapprove the township’s borrowing.
3. This Order is a response to two Petitions filed by at least ten (10) verified taxpayers within Wabash Township (“Township”), Tippecanoe County (“County”), objecting to the Township’s determination to incur of a loan in the amount of \$440,000.
4. For the reasons stated below, the DLGF denies the Petitions and approves the Loan.

PROCEDURAL HISTORY AND STATUTORY FACTORS

5. After consideration of facts and evidence submitted on this matter by the respective parties, the DLGF finds as follows:

6. A special meeting may be held by the legislative body of a township if the township trustee, the chairman of the legislative body, or a majority of the members of the legislative body issue a written notice of the meeting to each member of the legislative body. The notice must state the time, place, and purpose of the meeting. The legislative body may consider any matter at a special meeting. However, the only matters that may be acted on at the special meeting are the matters set forth in the notice. IC 36-6-6-13.5.

7. At any special meeting, if two or more members give their consent, the legislative body may determine whether there is a need for fire and emergency services or other emergency requiring the expenditure of money not included in the township's budget estimates and levy. Subject to IC 36-6-6-14.5, if the legislative body finds that a need for fire and emergency services or other emergency exists, it may issue a special order, entered and signed on the record, authorizing the executive to borrow a specified amount of money sufficient to meet the emergency. IC 36-6-6-14.

8. In determining whether a fire and emergency services need exists requiring the expenditure of money not included in the township's budget estimates and levy, the legislative body and any reviewing authority considering the approval of the additional borrowing shall consider the following factors:

- (1) The current and projected certified and noncertified public safety payroll needs of the township.
- (2) The current and projected need for fire and emergency services within the jurisdiction served by the township.
- (3) Any applicable national standards or recommendations for the provision of fire protection and emergency services.
- (4) Current and projected growth in the number of residents and other citizens served by the township, emergency service runs, certified and noncertified personnel, and other appropriate measures of public safety needs in the jurisdiction served by the township.
- (5) Salary comparisons for certified and noncertified public safety personnel in the township and other surrounding or comparable jurisdictions.
- (6) Prior annual expenditures for fire and emergency services, including all amounts budgeted under IC 36-6-6.
- (7) Current and projected growth in the assessed value of property requiring protection in the jurisdiction served by the township.
- (8) Other factors directly related to the provision of public safety within the jurisdiction served by the township.

IC 36-6-6-14(d).

9. In the event the township received additional funds in the preceding budget year for an approved expenditure, any reviewing authority (e.g., the Department) must take into consideration the use of the funds in the preceding budget year and the continued need for funding the services and operations to be funded with the proceeds of the loan. IC 36-6-6-14(e).

10. On December 10, 2019, the Township Trustee and Board held a meeting and voted to incur a loan in an amount not to exceed \$440,000. *Township Resolution 2019-5; Objector Exhibit A*. IC

36-6-6-14(a). The Resolution stated that the Township was acting on its authority under IC 36-8-13-6.5, which authorizes a proposed loan to acquire fire equipment and apparatus.

11. On January 3, 2020, a valid Petition in opposition to the loan was filed with the County auditor who certified the petition to the DLGF on the same day. *Objectors' January 3 Petition*. IC 36-6-6-14.5(a), (b).

12. The DLGF set the date for a public hearing on the objection petition for January 24, 2020, and provided notice of the hearing to the Township Trustee and the first ten taxpayers whose names appeared on the petition. *Notice of January 24 Hearing to Township Trustee; Notice of January 24 Hearing to Taxpayer*. IC 36-6-6-14.5(b), (d).

13. The DLGF conducted a public hearing on January 24, 2020 at the Tippecanoe County Office Building, W, 20 N Third Street, Lafayette, at 2:00 p.m. local time. DLGF staff members David Marusz and Miranda Bucy conducted the public hearing. *Hearing Officer's Rep., January 24, 2020; Notice of January 24 Hearing to Township Trustee; Notice of January 24 Hearing to Taxpayer*. IC 36-6-6-14.5(b), (c).

14. At the hearing, following then testified as Objectors:

Michael Francis
James Glenna
Don Fischer
David Byers
Carmen Vanderwaal
Janelle Smith

No one testified as Proponents.

15. On February 18, 2020, the Township Trustee and Board held a meeting and voted to incur a loan in an amount not to exceed \$440,000. The Resolution stated that the Township Board declared that an emergency exists and that the Resolution constitutes a "Special Order of the Board" authorizing the Trustee to incur the Loan. *Township Resolution 2020-1*. IC 36-6-6-14(a). Notice of the resolution was published in the *Lafayette Journal Courier* on February 24, 2020. *Objector Exhibit F*.

16. On March 9, 2020, a second Petition in opposition to the second Resolution was filed with the County auditor, who certified the petition to the DLGF on the same day. *Objectors' March 9 Petition*. IC 36-6-6-14.5(a), (b).

17. The DLGF set the date for a second public hearing on the objection petition for April 8, 2020, and provided notice of the hearing to the Township Trustee and the first ten taxpayers whose names appeared on the petition. *Notice of April 8 Hearing to Township Trustee; Notice of April 8 Hearing to Taxpayer*. IC 36-6-6-14.5(b), (d). The second public hearing was conducted via teleconference, due to the public health emergency declared by Governor Eric Holcomb on March 6, 2020 and renewed on April 5, 2020, and a directive of the Governor to conduct public meetings electronically on account of the emergency. *Executive Order #20-02; Executive Order #20-04; Executive Order #20-17*.

18. The DLGF stated in its notices that the second public hearing will be treated as a continuation of the January 24 hearing. Therefore, all evidence presented to the DLGF as part of the January 24 and April 8 hearing will be taken under consideration in the DLGF's final determination. *Hearing Officer's Rep., April 8, 2020; Notice of April 8 Hearing to Township Trustee; Notice of April 8 Hearing to Taxpayer.*

19. The DLGF conducted the second public hearing on April 8, 2020. DLGF staff members David Marusarz and Emily Crisler conducted the public hearing. *Hearing Officer's Rep., April 8, 2020; Notice of April 8 Hearing to Township Trustee; Notice of April 8 Hearing to Taxpayer.* IC 36-6-6-14.5(b), (c).

20. The following testified at the second hearing as opponents:

Mike Francis
Patricia Mason
James Glenna

21. The following testified at the second hearing as proponents:

Brad Bingham
Edward Ward
Jim Lewis
Gabe Gerth
Jennifer Teising
Michelle Wietbrock

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

Objector Exhibit A: Handout prepared by Michael Francis.
Objector Exhibit B: Written Testimony of Richard Hayden.
Objector Exhibit C: Written Testimony of Patricia Mason.
Objector Exhibit D: Pay-2020 1782 Notice for Wabash Township.
Objector Exhibit E: Excerpt of Lafayette Journal Courier, February 24, 2020 edition, page 11B.
Objector Exhibit F: Excerpt of Lafayette Journal Courier, February 24, 2020 edition, page 10B.
Objector Exhibit G: Excerpt of Lafayette Journal Courier, March 2, 2020 edition, page 12B.
Objector Exhibit H: Printouts of Indiana Code 5-3-1-2 and 5-3-1-4.
Objector Exhibit I: Letter from Bill Jones, Tippecanoe Township Trustee, per request from Patricia Mason, dated April 9, 2020.
Objector Exhibit J: Written Testimony of Michael Francis, April 14, 2020.
Objector Exhibit K: Powerpoint presentation prepared by Michael Francis.

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

Proponent Exhibit 1: E-mail from Gabe Gerth to David Marusarz, February 7, 2020 at 10:44 a.m.

Proponent Exhibit 2: Letter from Doug Forsman to David Marusarz, April 6, 2020 at 6:34 p.m.

Proponent Exhibit 3: National Fire Protection Association Standard 1710.

Proponent Exhibit 4: Five-year Capital Plan 2006-2010.

Proponent Exhibit 5: Powerpoint Presentation, “NFPA 1710 & 1720: It’s a Local Decision”.

Proponent Exhibit 6: Letter from Mike Francis to Julie Byers, December 13, 2011.

Proponent Exhibit 7: Township Board Meeting Minutes, April 27, 2015.

Proponent Exhibit 8: Township Board Meeting Minutes, December 8, 2015.

Proponent Exhibit 9: Township Board Meeting Minutes, September 13, 2015.

Proponent Exhibit 10: Township Board Meeting Minutes, October 13, 2015.

Proponent Exhibit 11: Township Board Meeting Minutes, December 15, 2016.

Proponent Exhibit 12: Township Board Meeting Minutes, September 20, 2017.

Proponent Exhibit 13: Township Board Meeting Minutes, January 2, 2018.

Proponent Exhibit 14: Township Board Meeting Minutes, September 17, 2018.

Proponent Exhibit 15: Township Board Meeting Minutes, October 17, 2018.

Proponent Exhibit 16: Township Board Meeting Minutes, November 17, 2018.

Proponent Exhibit 17: Letter of Edward Ward to Department, received April 15, 2020.

Proponent Exhibit 18: Letter of Michelle Wietbrock to Department, received April 15, 2020.

Proponent Exhibit 19: Letter of Gabriel Gerth to Department, received April 15, 2020.

Proponent Exhibit 20: Motion to Dismiss Objection Petition, filed with Department on April 15, 2020.

Proponent Exhibit 21: Written Statement of Jennifer Teising, received April 15, 2020.

Proponent Exhibit 22: Township Board Meeting Minutes, December 10, 2019.

Proponent Exhibit 23: Township Board Meeting Minutes, February 18, 2020.

Proponent Exhibit 24: Written Statement of Kevin Keckler to Department, received April 15, 2020.

Proponent Exhibit 25: Written Statement of Jim Lewis to Department, received April 15, 2020.

Proponent Exhibit 26: Written Statement of Cinnamon Gellatin to Department, received April 15, 2020.

Proponent Exhibit 27: Written Statement of Timothy Heath and Richard Doyle to Department, received April 15, 2020.

Proponent Exhibit 28: Written Statement of Shari Hertz Hacker to Department, received April 15, 2020.

Proponent Exhibit 29: Written Statement of Alex Mahan to Department, received April 15, 2020.

Proponent Exhibit 30: Township Budget Information Page, available¹ at <http://www.wabashtrustee.com/budget>.

22. The Department recognizes the following items as part of the Record:
- (1) The Hearing Procedures Script for the January 24 hearing.
 - (2) The Hearing Procedures Script for the April 8 hearing.
 - (3) The Hearing Record of Evidence for the January 24 hearing.

¹ As of the date of this Order, the website is still functional.

- (4) The Hearing Record of Evidence for the April 8 hearing.
- (5) A digital video recording of the January 24 hearing.
- (6) A digital video recording of the April 8 hearing.
- (7) The hearing sign-in sheets for the January 24 hearing.
- (8) Township Resolution 2019-5.
- (9) Township Resolution 2020-1.
- (10) Objectors' Petition, filed January 3, 2020.
- (11) Objectors' Petition, filed March 9, 2020.

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

23. Objectors first state that the expected tax increase to come from paying off the Loan will exceed the practice of past Township officials to keep taxes affordable to its residents. This concern is amplified by the recent tax increases in the Township – up 10% according to the May 2020 tax installment – and the economic burden borne out of the current public health emergency. *Testimony of Michael Francis; Patricia Mason; and James Glenna.* In particular, the tax rate between 2018 and 2019 increased by 41.8%, suggesting the Township has not been looking carefully at their tax rates. *Testimony of Carmen Vanderwaal.* One of the Objectors claim the Township's current budget of \$1 million is enough money such that a loan is not necessary. *Objector Exhibit B.*

24. Objectors state that, contrary to the Township's budget presentation, service runs and growth in the service area have not grown significantly over the last few years. Specifically, they allege that, whereas the VFD claims service runs went up 16% from 2015 through 2019, the Tippecanoe County Sheriff's Department verified the service runs to be lower in that same period:

Year	Total runs	Up/Down	% change
2015	1225	--	--
2016	1207	Down 18	(1.5%)
2017	1245	Up 38	3.0%
2018	1272	Up 27	2.0%
2019	1322	Up 50	3.7%

Likewise, the number of building permits issued in the Township from 2017 through 2019:

Year	Building permits issued
2017	146
2018	101
2019	166

Testimony of Michael Francis; Objector Exhibits A, J, & K.

25. Objectors also state that the Township has inappropriately cited to West Lafayette's salaries as a point of comparison for where the salaries of the Township's paid firefighters should be.

Rather, they identify the Cities of Frankfort and Crawfordsville, as well as the statewide average as better comparisons:

Township 2020 Budget estimates:

Fire Chief:	\$56,243
Firefighter 1	\$49,839

Comparisons:

Average Indiana Firefighter Salary as of 12/26/2019:	\$45,807
City of Frankfort:	\$52,397
City of Crawfordsville:	\$49,927

Testimony of Michael Francis; Objector Exhibits A & K.

26. Objectors also claim that in the last two years the Township has made unnecessary purchases that, were they not made, the Township would be in a much better financial position. The Objectors cite two examples: a new rescue engine and \$232,000 for a new apparatus. The Objectors also state the Township has accumulated \$320,000 in the cumulative fire fund for 2020. *Testimony of Michael Francis, Don Fischer.* The new apparatus are unnecessary given the service runs have not grown substantially. *Testimony of Don Fischer.* Other alleged expenses include raising the paid firefighters' annual salary by 50% to \$12,000. *Testimony of David Byers.*

27. Objectors also claim the Township has not pursued other revenue sources. For example, grants from different private and public sources, including the National League of Cities, FEMA, DHS, IAFF, and Citizens Corp. *Testimony of Janelle Smith.* The Objectors also claim the Township has not taken advantage of the public safety LIT allocation from the county.

28. Objectors make several claims about the current financial health of the Township, as follows:

- Department of Labor regulations do not mandate providing health insurance for staff when the department has fewer than 50 full-time employees.
- The Township's pay-2020 budget was reduced by the Department. Objectors state this shows an inability of the Township to manage its finances.
- The Township has had a positive cash balance since at least 2011. Objectors claim this shows the Trustee is accruing money rather than wisely taxing and spending only what is needed. Moreover, the cash balances do not justify an emergency loan of \$440,000.
- It is not explained why the Township appropriated \$50,000 in its general fund for health insurance for the paid firefighters.
- Regarding the Fire Fund specifically, there is no need to increase wage and salaries for firefighters when their work has not changed from before.
- Regarding the Loan specifically, the Trustee has not done her due diligence or explained to the public what plans the Township has for the future.

Objector Exhibit C.

29. There are other ancillary claims made, as follows:

- The Township Trustee has not been transparent and responsive to the public about the Loan. *Testimony of David Byers.*
- There was not much support from the Township Board, with only one member advocating for the Loan and attending the public hearing on the Loan. *Testimony of David Byers.*

- The Township did not publish notices as required by IC 5-3-1-2 & 5-3-1-4. *Objector Exhibits C, E, F, G, & H.*
- No one from the Township has reached out either to surrounding units about the prospect of forming a fire territory or to the county about forming a fire district. *Objector Exhibits C, I, J.*

30. Finally, the Objectors responded to the Proponents’ evidence supporting the need for the Loan based on IC 36-6-6-14(d). *Testimony of Patricia Mason; Objector Exhibit C.* These will be discussed in greater detail in Part C., below.

B. Summary of Proponents’ Contentions

31. The Township acknowledges the errors in its first resolution and the Township Board would adopt a second resolution with the correct citation to IC 36-6-6-14 authorizing the Loan. *Proponent Exhibit 1.*

32. The Township incorporated by reference in its evidence the 2020 budget presentation that is posted on the Township’s website. The website includes the following:

- A powerpoint presentation of the proposed 2020 budget.
- Agendas, minutes, and videos of the Township Board meetings held on September 17 and October 15, 2019.
- Questions from the public and responses from the Township Trustee following the September 17 and October 19 meetings.
- Annual financial reports, budget estimates for 2019 and 2020, and the June 30, 2019, balance sheet.

Proponent Exhibit 30.

33. The Township 2020 budget presentation contained the following information:

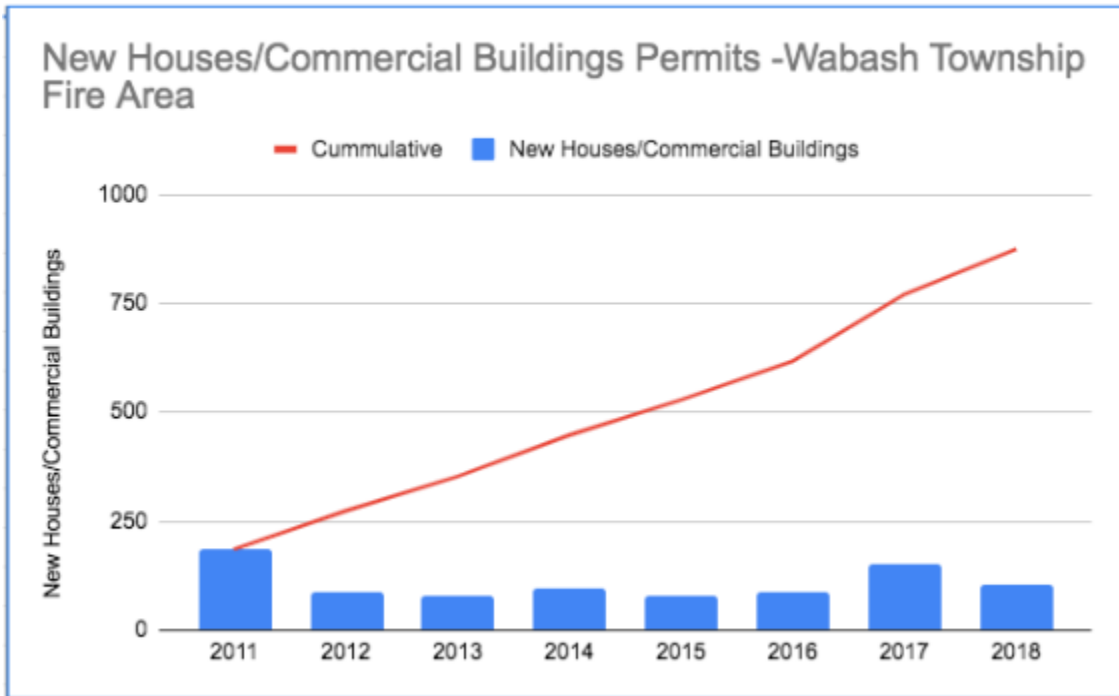
- The current and projected public safety payroll needs of the Township:

		2019	2020
Salaries and Wages	Chief	\$12,360	\$62,607
Salaries and Wages	Fire Fighter	\$92,000	\$139,500
Salaries and Wages	Maintenance Personnel	\$1,000	\$5,000
Employee Benefits	Social Security	\$8,367	\$17,000
Employee Benefits	Unemployment	\$500	\$1,200
Employee Benefits	Perf	\$0	\$30,000
Employee Benefits	Insurance	\$0	\$50,000
		\$114,227	\$305,307

- The current and projected need for fire and emergency services in the Township:

	2018	2019	2020	2021
Fire	300	400	489	571
Medical	700	900	1144	1334
Total	1200	1400	1633	1905

- The current and projects growth in the number of persons served in the Township:



- Salary comparisons for public safety personnel between the Township and West Lafayette:

	West Lafayette	Wabash
Runs/Year	3000	1300
Staffing	12/shift	1/shift
Full-time pay	\$65K	\$49K
Benefits	Retirement, Health	None

- Annual expenditures for fire and emergency services for 2016 through 2020 (projected):

FIRE 1111	DEBT 1182	CUM 1190
2016 - \$246,662	2016 - \$143,342	2016 - \$131,956
2017 - \$223,686	2017 - \$143,342	2017 - \$50,678
2018 - \$243,444	2018 - \$143,342	2018 - \$246,971
2019 - \$248,227	2019 - \$116,985	2019 - \$250,000
2020 - \$404,418	2020 - \$113,800	2020 - \$300,000

- Current and projected growth Township assessed value, segregating the assessed value attributable to the VFD service area:

Wabash Township
Rates Overview
December 10, 2019

	2016	2017	2018	2019	2020	2021	2022
Assessed Value Township:	\$ 1,826,843,030	\$ 1,892,004,545	\$ 1,882,468,955	\$ 1,928,593,287	\$ 2,024,501,452	\$ 2,044,746,467	\$ 2,065,193,931
Fire:	\$ 729,340,023	\$ 754,867,329	\$ 779,392,456	\$ 807,307,507	\$ 862,575,304	\$ 871,201,057	\$ 879,913,068
% Growth Township:		3.44%	-0.51%	2.39%	4.74%	0.99%	0.99%
% Growth Fire:		3.38%	3.15%	3.46%	6.41%	0.99%	0.99%

- Number of volunteer firefighters for the Township from 2015 through 2019:

Fire Department Volunteers Retaining Volunteers

- 2015: 35
- 2016: 33
- 2017: 40
- 2018: 37
- 2019: 33

Proponent Exhibit 30.

34. Proponents claim a fire territory is in the planning stages and the Township has reached out to other units regarding forming one. The Township expects to have a fire protection territory established by 2023. In that time, the volunteer fire department will need to provide itself with additional resources or it will have to reduce services for 2021 through 2023. Regarding need and revenue sources, Proponents add that the Township has had expenses exceeding revenues for 8 years. *Proponent Exhibit 21.* Specifically, it has spent \$40,000 out of its cash balance over the last 3 years, accounting for 22% of its operational reserves. The \$440,000 to be received from the Loan will make the Township’s Fire Fund budget fundable until a fire territory or district can be established. The Loan itself will result in a tax rate increase of approximately \$0.0499, which amounts to a \$4-\$28 per year increase in taxes for homesteads, \$50-\$100 for non-homestead properties, and \$100 and over for commercial properties. *Testimony of Gabriel Gerth; Proponent Exhibit 19.* The \$440,000 loan is in addition to approximately \$200,000 that the Township plans to spend from cash. *Testimony of Jennifer Teising.* The Township had applied for both a Public Safety LIT distribution from the County Council, but was denied because the submission was not timely, but Proponents contend the Township would apply again. The Township had also applied

for the FEMA SAFER grant. Finally, the Township also plans on a feasibility study for charging for ambulance service. *Testimony of Jennifer Teising; Proponent Exhibit 21.*

35. Regarding some of the statutory factors outlined in IC 36-6-6-14(d), Proponents state as follows:

- Need for emergency and fire services is estimated to grow 16% in 2020.
- The VFD is currently not meeting NFPA Standard 1710, which requires 4 firefighters to make the initial response on a service run within 5 minutes of the call, 90% of the time.
- The Township has had to use the rainy day fund in at least 2016 through 2019 for operating expenses, which makes the operating fund budget for those years look low. For example, in 2019 \$23,000 was spent out the rainy day fund for utilities, therefore the actual operating expenses in 2019 was closer to \$300,000.
- The Township purchased a \$700,000 fire truck prior to Ms. Teising's election as trustee in 2018.

Proponent Exhibit 21.

36. Proponents also state that several members of the VFD have given support for the Loan, particularly as a bridge loan while the Township works to transition the VFD into increased reliance on career firefighters. They add that transitioning into a combination department is necessary to attract and pay firefighters, which will ensure services can continue to be provided as need for services continue to grow. *Testimony of Jennifer Teising; Proponent Exhibits 18, 24, 25, 28, 29, & 30.*

37. Proponents provided a letter from the fire chiefs of West Lafayette and Lafayette voicing support for continued cooperation with the Township. *Proponent Exhibit 27.*

38. Proponents also claim growth in the Township has added to its population density. This has increased the VFD's service run volume, though the VFD has been successfully making calls. *Testimony of Liz Solberg; Testimony of Ed Ward.* Population growth

39. Regarding the hearings themselves, Proponents argue the Township Board adopted both resolutions, each time after giving consideration to the IC 36-6-6-14(d) factors. The minutes of the December 10, 2019 Board meeting describe that Trustee Teising mentioned the factors, and Boardmembers asked questions about some of them. *Proponent Exhibit 22.* Similarly, the February 18, 2020 hearing minutes show that Mr. Gerth discussed the Loan before the Board. *Proponent Exhibit 23.* In addition, the Trustee has been transparent throughout the process. Specifically, by answering every question asked from the public and posting the proper notices. *Testimony of Jennifer Teising.*

40. Following the April 8 hearing, the Proponents filed a motion to dismiss the Objectors' Petition on the following grounds. First, the Township Board duly considered the eight factors under IC 36-6-6-14(d) to declare an emergency. Second, the Objectors had previously acknowledged a need for additional operating expenses and that the Petition evinces only a political agenda against the Township. Third, the DLGF lacks jurisdiction to review the Loan, as IC 6-1.1-18.5-8(g) states DLGF approval is not required before a taxing unit may incur a debt obligation. *Proponent Exhibit 20.*

C. Consideration of IC 36-6-6-14(d) Factors

The current and projected certified and noncertified public safety payroll needs of the township.

41. Proponents claim that currently, there are 33 volunteers for the Township VFD, one fire chief, and two paid firefighters. *Proponent Exhibit 30; Township 2018 Annual Financial Report.* The Township is proposing to increase the salaries expenses from \$114,227 to \$305,307. The Loan would allegedly allow the Township to add 2 more staff, provide benefits to full-time staff, and retain full-time firefighters. *Proponent Exhibit 30.*

42. Objectors claim that actions of the Trustee have diminished the role of the volunteer firefighters, the unincorporated area of the Township cannot by itself fund a fully-paid fire department, and that creating paid positions will not provide the necessary personnel to adequately maintain operations. *Objector Exhibit C.*

The current and projected need for fire and emergency services within the jurisdiction served by the township.

43. Proponents claim the Township VFD reported 917 service runs as of September 17, 2019, with expected service runs to be 1633 in 2020 and 1905 in 2021. The Township also stated it expects 800-1000 new homes to be built in 2020, but volunteer firefighter growth has not kept up with township growth. The Township represented the Loan as a “bridge loan” and a “band-aid” until a permanent solution is found. *Proponent Exhibit 30.*

44. Objectors claim the service area of the VFD has decreased due to West Lafayette’s annexations, yet costs have increased inexplicably. *Objector Exhibit C.*

Any applicable national standards or recommendations for the provision of fire protection and emergency services.

45. Proponents state that Standard 1710 of the National Fire Protection Association recommends a minimum of 14 firefighters for an initial full alarm of a typical two-story, single family dwelling. *NFPA Standard 1710 (last revised September 2016).* Objectors claim that neither this standard nor any other national standard, federal law, or state law mandate paid personnel or health benefits for a fire department with fewer than 6 employees. *Objector Exhibits C; J.*

Current and projected growth in the number of residents and other citizens served by the township, emergency service runs, certified and noncertified personnel, and other appropriate measures of public safety needs in the jurisdiction served by the township.

46. The Township budget presentation states that the number of new housing and commercial building permits within the fire service area increased consistently between 2011 and 2018, although it did not give the actual number of permits issued per year. *Proponent Exhibit 30.* The Township also did not indicate population growth. Service runs were shown to have increased.

47. Objectors claim that two paid firefighters are adequate to continue operations in the service area. In addition, annexations have been constant over the years such that services have been adequately handled by volunteers. *Objector Exhibit C.*

Salary comparisons for certified and noncertified public safety personnel in the township and other surrounding or comparable jurisdictions.

48. Proponents state that West Lafayette provides \$65,000 annual full-time salary, with retirement and benefits, compared to \$49,000 annual full-time salary without benefits for the Township VFD. *Proponent Exhibit 30.*

49. Objectors respond that the Township’s budget estimate lists the salary for the fire chief at \$56,243 and a firefighter at \$49,839. By comparison, the City of Frankfort and Crawfordsville pay firefighters \$52,397 and \$49,927, respectively. The statewide average for firefighters is \$45,807. *Objector Exhibit A.* The Objectors argue that the current fire staff are adequately paid and that there is no present need for a salary increase like what the Township is proposing. *Objector Exhibit C.*

Prior annual expenditures for fire and emergency services, including all amounts budgeted under IC 36-6-6.

50. Proponents represent the expenses for fire services from 2016 through 2019 to be as follows:

	Fire Fund	Debt Service Fund	Cumulative Fire Fund
2016	\$246,662	\$143,342	\$131,956
2017	\$223,686	\$143,342	\$50,678
2018	\$243,444	\$143,342	\$246,971
2019	\$248,227	\$116,985	\$250,000

Proponent Exhibit 30.

51. Objectors argue that the Township’s 2020 budget did not add any additional types of costs despite the \$440,000 budget increase to the Fire Fund. *Objector Exhibit C.*

Current and projected growth in the assessed value of property requiring protection in the jurisdiction served by the township.

52. Proponents indicate that the assessed value of the unincorporated area has increased from \$729,340,023 in 2016 to \$807,307,507 in 2019, averaging 3.33% per year. Assessed value is expected to grow to \$879,913,068 by 2022. *Proponent Exhibit 30.*

53. Objectors respond that growth in the Township service area is primarily residential. Such growth can be adequately served by the existing VFD without additional costs. *Objector Exhibit C.*

Other factors directly related to the provision of public safety within the jurisdiction served by the township.

54. Proponents state that the current board and trustee used the budget allocations from the previous administration, but less money has been received than spent. As a result, the Township has been experiencing a deficit over the last ten years. Proponents also state that the fire department is in a “crisis” and that it is trying to seek a permanent solution, including establishing a fire protection district or territory. *Proponent Exhibit 30.*

55. Objectors respond generally that the Township’s budget has been handled in a “slipshod” way and there is no evidence the Trustee did her due diligence in determining the needs of the VFD. *Objector Exhibit C.* Objectors also claim at no point did the Township officials assert the Loan is needed for the good of the Township residents. *Objector Exhibit J.*

56. Other testimony and evidence from both Proponents and Objectors will be inserted as needed in the Department’s analysis.

ANALYSIS

Treatment of Resolutions & Petitions

57. In the Objectors’ January 3, 2020 Petition, it was argued that, in its December 10, 2019 resolution, the Township cited as the basis for the Loan IC 36-8-13-6.5, which has to do with purchasing equipment. *Objectors’ January 3 Petition; Objector Exhibit A; Township Resolution 2019-5.* This was acknowledged by the financial advisor for the Township, who stated the Township would adopt a new resolution for the Loan with the correct citation. *Proponent Exhibit 1; Township Resolution 2020-1.* The Department finds that the Township’s February 18, 2020 resolution, having been properly adopted, supersedes the December 10, 2019 resolution. Therefore, the objection of the improper citation is moot. The Department will thus proceed to consider all other issues raised in both Petitions, which for the most part concern the Loan, itself.

Motion to Dismiss

58. Indiana Code 6-1.1-18.5-8(g) applies to bonds, leases, or other debt for which a civil taxing unit makes a preliminary determination to incur after June 30, 2018, and states that “[n]otwithstanding any other provision, review by the [DLGF] and approval by the [DLGF] is not required before a civil taxing unit may issue or enter into bonds, a lease, or any other obligation.”²

59. The DLGF declines to consider the motion, for two reasons. First, the DLGF has treated taxpayer objections filed with the DLGF pursuant to IC 36-6-6-14.5 or other statutes in an informal manner; that is, without motions, rules of procedures, and other indicia typical of an adjudicative setting. The purpose of these hearings and associated procedures is so that the DLGF has the evidence necessary to make an informed final determination on a petition. These petitions also typically involve an imbalance of advantage between the unit and the remonstrators, where the latter cannot more easily obtain legal counsel for assistance. In an attempt to offset this imbalance, the DLGF prefers to consider the evidence given from both sides and make a determination based on that evidence.

² The Township is a “civil taxing unit” as defined by IC 6-1.1-18.5-1.”

60. Second, the DLGF declines to consider the argument that IC 6-1.1-18.5-8(g) states the DLGF lacks jurisdiction to act on petitions against a civil taxing unit's action, even if that action is a preliminary determination to incur a loan. To date, there is no case law supporting this contention. The DLGF acknowledges that IC 6-1.1-18.5-8(g) went into effect on July 1, 2008³, and that the last amendment to IC 36-6-6-14.5 was in 2003⁴. The DLGF also acknowledges that it is a maxim of statutory construction that where two or more statutes are in conflict, the statute adopted later takes precedence over earlier adopted ones.⁵ The DLGF must weigh this against the concern, similar to what was described above, that the taxpayers should not be prevented from exercising their statutory appeal rights, so long as they remain in the letter of the law, even if the current state of the existence of those rights are questioned.

Township Declaration of Emergency & Consideration of Factors under IC 36-6-6-14(d)

61. The Objectors have the burden of showing that the special order to incur an emergency fire loan is unnecessary or unwise. IC 36-6-6-14.5(a).

62. The nature of the emergency fire loan is to provide for "a need for fire and emergency services or other emergency requiring the expenditure of money not included in the township's budget estimates and levy." IC 36-6-6-14(a). The term "emergency" is defined in statute as "a situation that could not reasonably be foreseen and that threatens the public health, welfare, or safety and requires immediate action." IC 36-1-2-4.5.

63. The Department must find whether substantial evidence supports the Township's action. *Perry v. Dep't of Local Gov't Finance*, 892 N.E.2d 1281, 1283 (Ind. Tax Ct. 2008).

64. In *Perry v. Dep't of Local Government Finance*, the Tax Court upheld a determination of the Department that a Township Board can properly find an emergency exists where, unless the Township transitions from a volunteer to full-time fire department, it would be unable to provide adequate firefighting services to its citizens. *Perry*, 892 N.E.2d at 1285. The Court went on to state that in determining whether or not an emergency exists, the "decision as to how to best provide firefighting services within the township is one that properly lies within the local fire department and the [township] Board." *Id.* at 1285.

65. The key finding that the Department must make here is whether the Township Board had considered the eight statutory factors in IC 36-6-6-14(d) in determining whether the Loan is necessary. The Department finds that the February 18, 2020 resolution adopted by the Township Board constituted a special order pursuant to IC 36-6-6-14.

66. Proponents provided evidence that the Township Board was presented with information for consideration pursuant to IC 36-6-6-14(d) at its December 10, 2019 meeting. *Proponent Exhibit 22*. The Loan itself was further discussed at the February 18, 2020 meeting after which the Township Board adopted the resolution. *Proponent Exhibit 23*.

³ Pub. L. No. 146-2008, § 171.

⁴ Pub. L. No. 256-2003, § 37.

⁵ HAMILTON CO. COUNCIL V. STATE EX REL. GROFF, 87 N.E.2D 810, 812 (IND. 1949).

67. Apparent in the testimony and evidence from both Objectors and Proponents is that each side has conflicting ideas about how to fund fire services. Objectors claim that the Township should only tax and spend what it needs, based on taxpayers' ability to pay and historically how the Township has been able to function. Proponents, by contrast, claim that the Township's current revenues do not match the true need and that the Township therefore must do what is necessary to catch-up to that need. This is a markedly political issue, and the Department will not take sides on it.

68. The Proponents' testimony and evidence have several key themes that suggest the Township's need for an emergency fire loan. First, the growing population in the VFD service area, which corresponds to an increase in service calls. Second, the inability of the Township's tax levies to keep up with the growing need for services. Third, the desire of the Township to pay its VFD competitive salaries and wages, presumably as part of a plan to transition the VFD to a paid fire department.

69. The Objectors presented evidence that the needs of the Township fire and emergency services are overstated, inaccurate, or improper. Specifically, the number of actual service runs in 2015 through 2018 trend lower than what the Township represented; the number of building permits issued are lower than what the Township represented; and comparing the salaries of paid firefighters from Frankfort and Crawfordsville better represents the locality pay typical of a unit like the Township, unlike West Lafayette. *Objector Exhibits A & J; Proponent Exhibits 2 & 30.*

70. Part of the Proponents' argument revolves around urban growth in the service area of the VFD. Assessed value growth suggests development over a seven-year period that will slow by 2022. No population figures were provided. Regarding the service run counts, the Objectors claimed 1200 runs in 2018 and 1322 in 2019. By contrast, the Township claimed 1272 in 2018 compared to 1400 in 2019. The Department does not see a significant enough difference between what the Objectors claimed and what the Township claimed to reject the latter's counts as inaccurate. What is apparent is that service runs have increased overtime, something acknowledged by one of the Objectors since at least 2015. *Proponent Exhibits 7-16.* Likewise, with the building permits. Where the disagreement lies is whether the VFD can adequately handle this growth. The Department will defer to the Township officials.

71. The argument that the Township's reliance on West Lafayette for a salary comparison is misplaced is more compelling. Making comparisons based on localities is more subjective than raw tallying of numbers, and reasonable people can disagree about whether the Township should have chosen one city instead of another when drawing up a comparison. At the same time, as much as the Objectors question the Township's use of West Lafayette, so too the Proponents could question the Objectors' use of Frankfort and Crawfordsville (even if only because they are farther away from the Township). Indeed, the argument could be made that Crawfordsville and Frankfort were chosen by the Objectors is because those communities are paying their firefighters similar to what the Township is paying currently. For that reason, the Department will defer to the Township's salary comparison.

72. There is also the question of whether the Township has actually contacted neighboring units about forming a fire territory or district. Proponents claim the Township has, while Objectors say otherwise. To the Objectors' credit, they did provide written testimony from one trustee who stated he had not been contacted and, based on his personal knowledge, neither has three other trustees. The Trustee has stated, in testimony and elsewhere, that the Loan is a "bridge loan" and a "band-aid" until a more permanent solution can be found. The Trustee also stated that a fire territory is in "planning stages." The Township's website states that the Township is looking for a permanent plan and suggests it will pursue establishing a fire protection district or territory in the future.⁶ Objectors purport that the officials from surrounding townships have not yet been approached about forming a territory. By contrast, Proponents point to a letter from the West Lafayette and Lafayette fire chiefs. However, this letter only expresses support for continued cooperation with the Township, not that the fire chiefs are open to joining a territory with the Township. Even if the Township has not actually contacted other units with regard to a fire territory, it is clear from the evidence that the Township only intends this Loan to be a temporary fix, however else something more permanent comes about or when.

73. The Department also defers to the Township in deciding to offer benefits to its firefighters. While NFPA Standards or state or federal law may not mandate providing benefits, that does not mean the Township should not provide them. This is a political decision left to local elected officials.

74. The last main point of contention has to do with the Township's ability to pay for fire services overtime. Proponents point to increasing service needs, declining revenues and shrinking reserves. Objectors argue the Trustee has not done enough to ascertain the needs of the VFD and Township residents, generally.

75. Proponents provided evidence that, as early as 2006, the Township VFD had a five-year plan to acquire over \$650,000 in equipment and hired staff. The plan included statements from the fire chief at the time that the fire chief has spent over 1300 on non-fire activities, 3-4 evening meetings per week, and working on the weekends and during vacations. Proponents also provided correspondence from Michael Francis (then the VFD chief and same among the Objectors) and Board minutes indicating Mr. Francis's reporting of increasing growth and needs in the Township. *Proponent Exhibits 4, 6-16*. In particular, during the September 20, 2017 meeting, Mr. Francis claimed that expansion will require more firefighters and ambulances in order to ensure no gaps in service and more safety for the firefighters. *Proponent Exhibit 12*.

⁶ Specifically, in the question and answer portion of the website:

"Can the tax be added incrementally, with the emergency fire loan being taken out in steps in sequential years?"

Yes. This is our plan. If the township board and residents decide that they do not want to reduce services we plan to increase the budget each year (starting in 2020) until a permanent tax rate is set by creating a fire district or territory. So the 2020 budget is the first increment. In 2021 It[sic] will potentially double again and 2022 potentially double again. In 2023 we would set the permanent solution in place which would double the budget one last time."

Proponent Exhibit 30.

76. The two apparatus the Township purchased in 2018 were paid for out of the cumulative firefighting building and equipment fund (“cumulative fund”). The 2018 annual financial report shows the purchase of \$239,966. That same year, the cumulative fund received \$134,872, a January 1 operating balance of \$453,346.62 and a December 31 of \$341,246.93. *Township 2018 Annual Financial Report, p. 15*. The cumulative fund may be used for construction or maintenance of buildings and equipment for fire and emergency medical services. IC 36-8-14-2(c). Property taxes received from the cumulative fund tax rate can only be put into the cumulative fund and used as permitted by IC 36-8-14-2, which does not include firefighter salaries and benefits. Salaries and benefits can only be paid for out of the township firefighting fund. While on the surface, the purchase of the apparatus suggest improper spending on the part of the Township, the purchase was made from a fund that could not be used for operational costs in the first place.⁷ The apparatus purchase did not have a negative impact on the ability of the Township to pay salaries and benefits for its firefighters. Indeed, had the cumulative fund not exist or did not have sufficient tax revenue to pay for the apparatus itself, the Township would have had to pay for the apparatus out of the firefighting fund, in which case the question about the wisdom of purchasing apparatus amid an apparent funding crisis would have been pertinent. As that is not the case, the Department does not accept the Objectors’ claim about the apparatus purchase.

77. The Objectors’ argue the Township has not fully vetted all other funding options, especially grants.⁸ The Proponents later argued that the Township did apply for a local income tax distribution from the County, which was denied. *Proponent Exhibit 21*. No evidence was provided that this was done, including the written request from the Township VFD under IC 6-3.6-6-8(c) or the Council’s rejection of the request.⁹ The Department will not accept either party’s contention on this point. What the Department does accept is that the Township intends to keep trying for this distribution, a point where both party’s seem to converge. Moreover, applying for the LIT distribution does not guarantee receipt of funds, and so it is prudent for the Township to consider other options for revenue.

⁷ A township firefighting fund can be used for the purchase of apparatus and equipment. IC 36-8-13-3(a)(1). The Township’s 2018 Annual Financial report does not indicate the Township purchased the apparatus using firefighting fund dollars.

⁸ The Township’s website addressed a question about receiving local income tax revenue:

“Why not seek funding from the county safety tax[*sic*]

We submitted a request for \$180,000 from the county public safety tax by the deadline in July. I have been told this will not be voted on in 2020 and we would need to do an additional request for funds in July 2020 for 2021. Chief [Ed] Ward and I plan to attend the next public meeting for the county council and ask them to vote on our request. I believe a lawyer could help us resolve this issue if necessary. We will continue to ask for support from the public safety tax every year.”

Proponent Exhibit 30 (brackets added).

⁹ IC 6-3.6-6-8(c) provides for a fire department, volunteer fire department, or emergency medical services provider to apply for a share of LIT revenue allocated for public safety purposes. The application must be submitted to the county council before July 1. The county council must review the application before September 1, but is not required to grant the request. If the county council grants the distribution, it must adopt a resolution approving the request and forward this resolution to the Department and county auditor within fifteen (15) days. To date, the Department has not received such a resolution from the Tippecanoe County Council.

78. As mentioned by the Objectors, the Township can seek grants and technical assistance for those grants. The Federal DHS, including FEMA, offers numerous federal non-disaster grants.¹⁰ The National League of Cities, and IAFF can provide assistance to governmental units with finding and applying for various grants.¹¹ Finally, the Indiana DHS funds the Indiana Homeland Security Foundation Grant Program, which is geared toward providing equipment for emergency responders.¹² It is prudent to pursue grants, where available, at the state and federal level, although applying for a grant does not guarantee receipt of funds and requires proper management.

79. The Department finds that, based on the foregoing, the Township Board was presented with all of the information and took it under advisement prior to adopting a special order as required by IC 36-6-6-14(d). People can reasonably disagree about whether the Township Board should have accepted the information as true or warranting the Loan, or whether the future plans for the Township is necessary. The Township Board having made the special order based on factors demonstrated by substantial evidence, the Department defers to the judgment of the Board in authorizing the Loan.

Ancillary Matters related to Loan

80. With respect to the Objectors' claim that the Township did not properly notice the meetings or the Loan, the Department finds that IC 5-3-1-2(a) states that compliance with the newspaper publishing laws in IC 5-3-1 only applies when the governing statute (in this case, IC 36-6-6-14 & 14.5) requires publication in accordance with that chapter.¹³ Indiana Code 36-6-6-14 provides that notice of the special meeting for the loan be given in accordance with IC 36-6-6-13.5, which is notice only between the township officials and not to the public.¹⁴ Section 14.5(a) does mention notice of the special order in the context of a public remonstrance, which implies this is a public notice. However, this does not expressly state the notice must be given in accordance with IC 5-3-1. The notice of the February 18 resolution was published in the *Lafayette Journal Courier* on February 24, 2020, along with notice of an emergency borrowing which was republished on March 2, 2020 in the same paper. *Objector Exhibits E, F, & G*. The Department therefore finds that the Township provided adequate notice in compliance with IC 36-6-6-14.5(a).

81. The Department will also not find that the Trustee has not been transparent to the public. The Township's website includes videos of the Township Board meetings, public comments about

¹⁰ See <https://www.fema.gov/grants>; <https://www.dhs.gov/dhs-grants>.

¹¹ See <https://www.nlc.org/membership/grant-opportunities>. The National League of Cities appears only to serve municipalities, not townships.

¹² <http://www.in.gov/dhs/2511.htm>.

¹³ IC 5-3-1-2(a) ("This section applies only when notice of an event is required to be given by publication in accordance with [IC 5-3-1].").

¹⁴ IC 36-6-6-13.5(a) states that "[a] special meeting may be held by the legislative body if the executive, the chair of the legislative body, or a majority of the members of the legislative body issue a written notice of the meeting to each member of the legislative body. The notice must state the time, place, and purpose of the meeting." Since the Objectors only claimed notice to the public was inadequate, the Department will not consider notice under this statute further.

the budget and the Loan, and the Trustee's responses. This is evidence that the Trustee has made budget and Loan information available to the public, that the Township officials conducted public hearings on these matter, and that the Trustee has received and responded to questions from taxpayers. This is indicia that the Township has been transparent to some degree. The Department will decline to evaluate whether the degree of transparency the Township exhibited throughout this process rises to the level satisfactory to the Objectors.

82. Finally, the Department will not accept the Objectors' concerns about how the Trustee has managed Township finances in other areas. Such matters are ancillary to the Loan, at best. Moreover, it is not the responsibility of the Department to audit a local unit's accounts or to critique whether a locally elected official is appropriating money in a way that is otherwise permitted under law. Nor will the Department weigh in on any motive on the part of the Objectors in filing the Petitions, as that too has nothing to do with what the Department is statutorily required to review under IC 36-6-6-14.5.

CONCLUSION

83. After weighing the testimony and evidence, the Department finds that the Township has provided evidence that the Township Board determined that an emergency exists.

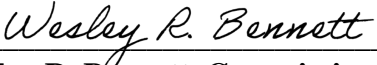
84. Therefore, the Department **DENIES** both Petitions against the Loan. The Loan is hereby **APPROVED** in the amount of \$440,000.

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

86. A taxpayer who signed a petition or a township against which a petition is filed may petition for judicial review of the final determination of the Department. The petition must be filed in the Indiana Tax Court not more than forty-five (45) days after the date of the Department's final determination. IC 36-6-6-14.5(e).

Dated this 1st day of June, 2020.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE



Wesley R. Bennett, Commissioner