

**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 OF A CUMULATIVE)
CAPITAL DEVELOPMENT FUND BY)
KNOX COUNTY)** **OBJ 17-003**

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana law allows a county to establish or reestablish a cumulative capital development fund (“Fund”) to provide money for any purposes recognized by IC 36-9-14.5-2. Fifty or more taxpayers may object to a county’s proposed Fund establishment. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund.
2. This Order is a response to a petition filed by at least 50 taxpayers within Knox County (“County”) objecting to the tax rate for the County’s proposed Fund, which is one type of cumulative fund governed by IC 6-1.1-41.
3. Since at least 50 taxpayers in the County filed a petition objecting to the reestablishment of the Fund, the Department was required to conduct a public hearing on the taxpayers’ objection petition.
4. For the reasons stated below, the Department approves the County’s proposed Fund establishment.

RELEVANT PROCEDURAL HISTORY

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

- IC 3-11-6-9 (Voting System Purchase Fund);

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

IC 36-9-14.5-2.

6. To provide for the Fund, a county fiscal body may levy a tax on all taxable property within the county in compliance with IC 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 under IC 36-9-14.5-2. If the county has previously impose the tax under IC 36-9-14.5-2 for one or more years, the maximum property tax rate is \$0.0333. IC 36-9-14.5-6(b).

7. As explained in IC 36-9-14.5-6(a), the establishment of a Fund is also governed by IC 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.

8. Notice of the County's proposal to establish its Fund was given to the affected taxpayers in the *Vincennes Sun Commercial* on July 18 and July 25, 2017. *Notice to Taxpayers CCD Fund Affidavits of Publication*. IC 6-1.1-41-3(a).

9. On July 28, 2017, the County held a public hearing and adopted a resolution establishing the proposed Fund. *Notice to Taxpayers CCD Fund Affidavits of Publication; Resolution No. 4-2017*. IC 6-1.1-41-3(a), (e).

10. On August 1, 2017, the County published a Notice of Adoption in the *Vincennes Sun Commercial*. Publication of this Notice triggered a 30-day remonstrance period. *Notice of Adoption Affidavit of Publication*. IC 6-1.1-41-3(e).

11. A petition was filed by at least 50 qualified taxpayers objecting to the proposed Fund establishment. The objection petition was timely filed with the county auditor between August 14 and August 24, 2017, and duly certified to the Department on August 18,

2017.¹ The objection petition stated that the objectors believe there is no need for the Fund, among other objections.² *Objection Petition; Certificate of Auditor*. IC 6-1.1-41-6(4).

12. The Department set the date for a public hearing on the objection petition for November 8, 2017, 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*. IC 6-1.1-41-7, 8.

13. The Department conducted a public hearing on November 8, 2017, at the Knox County Circuit Court, 111 N. 7th Street, Suite 14, Vincennes, Indiana 47591, at 1:30 p.m. local time. 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*. IC 6-1.1-41-7.

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

Ben Roeger
Bob Lechner
Peter Hoskins
Rhonda Foster
Nichole Like
Trent A. Hinkle
David Shelton
Kellie Streeter
Scott Brown
Bob Slayton

The following then testified as Objectors:

Mike Bauer
Tom Yochum
Tim Ellerman
Stacy Allen

15. Proponents presented the following exhibits, which are thus part of the Record:
Proponent Exhibit 1: Facility Assessment for the Current Knox County Buildings.
Proponent Exhibit 2: INVin Community Resource Guide, City of Vincennes Business & Arts Innovation Initiative.
Proponent Exhibit 3: Written script of testimony of Kellie Streeter, Knox County Commissioner.

¹ Several petition sheets with signatures had been filed with the County Auditor between August 14 and August 24. The County Auditor certified the petition to the Department upon the certification of the fiftieth taxpayer who signed the petition.

² As far as the Department is aware, there were multiple petition sheets that were circulated for signatures. Some of these petition sheets did not object to the need for the Fund, per se, but rather explicitly objected to the tax rate, the levy, or the purpose of the Fund. Twenty-nine of the thirty-five petition sheets filed with the Auditor, however, stated that there was no need for the Fund. *Objection Petition*.

³ The hearing was audio recorded by the hearing officer. The recording is available at the Department's Indianapolis office for inspection and copy.

Proponent Exhibit 4: Written testimony of Rama Sobhani, Director of Knox County Parks and Recreation Department.

Proponent Exhibit 5: E-mail from Dirk Carnahan, Knox County Prosecutor, to Bob Lechner, Knox County Commissioner, October 30, 2017.

Proponent Exhibit 6: E-mail from Bob Lechner to Kent Utt, President/CEO of Knox County Development Commission, November 7, 2017.

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

Objector Exhibit 1: Printout of Indiana Code Sec. 6-1.1-41-8 with handwritten notes.

Objector Exhibit 2: Printout of Indiana Code Sec. 36-9-14.5-6 with handwritten notes.

Objector Exhibit 3: Knox County Monthly Comparison Report for October 2017.

Objector Exhibit 4: Letter from Earl Pahmeier to Department, dated November 14, 2017.

Objector Exhibit 5: Letter from Kevin Emmons to Department, dated November 13, 2017.

Objector Exhibit 6: Letter from Larry Hancock to Department, dated November 13, 2017.

17. The Department recognizes the following items as part of the Record: (1) the County's submitted Fund proposal; (2) the Hearing Procedures Script; (3) the Hearing Record of Evidence; (4) a digital recording of the hearing; and (5) the hearing sign-in sheets.

SUMMARY OF THE PARTIES' CONTENTIONS

A. Summary of Proponents' Contentions

18. Ben Roeger testified that the County needed to establish the Fund in order to meet shortcomings and that it is not a new tax. He stated that because of a change in state policy last year, the County had lost \$300,000 to its property tax levy, and that in order to regain that lost levy the County needed to adopt the Fund. He then gave the procedural background, stating that the notice of public hearing, the resolution, and notice of adoption were all timely and legally valid. Finally, he stated that no one objected to the Fund being included in the County's 2018 budget advertisement. *Testimony of Ben Roeger; Audio Recording of Hearing at 0:07:46.*

19. Bob Lechner, president of the County Council, testified that the Fund was adopted as a result of the Department's policy changes regarding the levying of property taxes for capital development. He stated that the County then filed an appeal with the Department, which was subsequently denied. He then said that legislation was passed with assistance from the Department and the Association of Indiana Counties to address the matter, which at the time was not met with controversy. Mr. Lechner then testified that the County proceeded to adopt a Fund, which has been supported by nine out of ten County officials. He then stated that there is misinformation being spread about the Fund, such as

it will raise taxes by twenty percent. He also claimed that some of the signers of the petition were from the Vincennes Fire Department Board, which has its own Fund. He also stated that there is a need for the Fund because every county has to operate within the property tax caps and that there are unmet needs of the County. On the latter, he cited a statement from the County Prosecutor indicating that the Prosecutor's Office has had to operate off of dedicated funds and will be unable to function in a few months, a master plan of economic development, and a \$2.4 million joint investment project of the County & Vincennes. He stated that he had written evidence of blight showing need for the Fund; specifically, an architectural report indicating that several County buildings have many structural issues that must be addressed in order for the County government to function. Finally, he stated that the County did what the Department asked and the statutes that the Department "designed." *Testimony of Bob Lechner; Audio Recording of Hearing at 0:10:36; Proponent Exhibits 1, 2, and 5.*

20. Peter Haskins, executive director of Life After Meth, Inc., testified that the County is currently supporting a rehabilitation program out of the county jail, and that without the aid of the County Council, the program would not have funding. *Testimony of Peter Haskins; Audio Recording of Hearing at 0:22:35.*

21. Rhonda Foster, administrative assistant of the Knox County Parks & Recreation Department ("Parks Department"), read a letter on behalf of Rama Sobhani, superintendent of the Parks Department. Ms. Sobhani wrote in her letter that the County has lost about \$900,000 in revenue due to the property tax caps, which as a result the Parks Department "has had additional challenges that are more severe in nature than what most other local department have had to deal with." Ms. Sobhani stated that starting in 2013, the property tax levy rates for the Parks Department were insufficient to fund the budget, though being able to take operating loans paid from the County's COIT and CEDIT funds. She then stated that the Parks Department "has many challenges even with a fully funded budget, including capital development and infrastructure development," then citing examples of deteriorating conditions of the County's park buildings and infrastructure. *Testimony of Rhonda Foster; Audio Recording of Hearing at 0:24:31; Proponent's Exhibit 4.*

22. Nichole Like, vice president of the County Council, testified that she agreed with Mr. Lechner's remarks. She stated that the Fund was adopted because the Department "changed the way it read the legislation" by requiring each County to establish a Fund to have a levy rate adjustment. She stated that previously the County was allowed this adjustment and the levy would be applied to the general fund. She then stated that there was a legislative fix for Knox County to allow an adjustment to their maximum levy for 2017, which was spent on County needs, but that to adjust the rate there must be a Fund established for the County. Ms. Like then testified that this is simply a new Fund, which only affects how the property taxes are distributed for specific needs rather than for general use. She stated that the need for the Fund is based on the fact that the general fund operating balance has been in the negative since 2015, projected to be -\$1.5 million in 2018, and as a result the cash balance attributable to local income tax revenue, as well

as savings in the bank, have been diminished to fund operations. *Testimony of Nichole Like; Audio Recording of Hearing at 0:27:55.*

23. Trent Hinkle, member of the County Board of Commissioners, testified that Umbaugh & Associates conducted a study on the County using its reserves to fund operations, and that from this study the County seeks to establish the Fund to prevent its reserves from being depleted. He also stated that the County has plans to build a new community corrections center due to overcapacity of current facilities and that the Fund could also be used for renovation of other facilities. *Testimony of Trent Hinkle; Audio Recording of Hearing at 0:33:04.*

24. David Shelton testified that this Fund is simply a redistribution of new revenue intended to maintain other funds, adding that without this Fund the County would be penalized with a shortfall in local income tax revenue which, combined with lost property tax revenue, would cost the County \$500,000 per year. He then questioned what sorts of services the County would have to cut to make up for the losses. He also testified to the Objectors' petition, stating that taxpayers were lied to by those seeking their signatures by being told their taxes would go up if they did not sign, that signatures were improperly obtained under false pretenses, that there was inconsistent wording in the narratives of the petitions being circulated, that there is a dating disparity between the certification from the Auditor & the signatures, that there was no statement regarding perjury or a reference to the Indiana Code regarding the remonstrance of the Fund, and that approximately 50% of the signatures were obtained from residents of Vincennes who would not see an impact from the Fund. *Testimony of David Shelton; Audio Recording of Hearing at 0:35:52.*

25. Kellie Streeter, president of the Knox County Board of Commissioners, testified that there has been a "flurry of misinformation" about the Fund and that a local radio station attacked her personally, calling people to come to the hearing, which she acknowledged is allowed by Indiana law but also thought was being used by the Objectors as a platform of "political chicanery." She testified that the Fund is being established to move funds in order to keep the general fund maximum levy within the levy limits, therefore this is not a new tax. She also stated that the Fund will be used to pay for capital and operating expenses rather than rely on the general fund for these expenditures. She then stated several purposes showing need for the Fund: fixing 202 bridges in the County that have to be replaced within 10 years; paying off utility bills; enhancing cyber security systems; expanding services in the County; and funding projects for the County jail and court system. She claimed that the County cannot keep kicking the can on essential capital projects that would be paid out of this Fund. *Testimony of Kellie Streeter; Audio Recording of Hearing at 0:40:00.*

26. Scott Brown, President of the Vincennes City Council, testified that the benefit the City received for adopting its own Fund is, among other things, being able to provide competitive wages for its employees. He also stated that the City does not rely on the City or County general fund for its corrections facility, but rather receives money from the Department of Corrections; nevertheless, the City's corrections facilities are in need of repair. He then stated the state used to support local units with capital projects until

“HB 1006” was enacted.⁴ Finally, he claimed that the County’s higher population and higher crime rates compared to neighboring counties present a need for rehabbing these facilities. *Testimony of Scott Brown; Audio Recording of Hearing at 45:35.*

27. Bob Slayton testified that the money in question was already designated for the County and that the County is entitled to the money. He stated he disagrees with the contention that this Fund is a new tax, and that the local radio ads against the Fund were “demagoguery” and misinformation meant to make taxpayers believe this was a massive tax increase. He also stated that the County Commissioners have been frugal and that by taking away this money the County cannot do what they need to do. *Testimony of Bob Slayton; Audio Recording of Hearing at 49:49.*

28. At the hearing, Bob Lechner provided as evidence an e-mail to him from Dirk Carnahan, the County Prosecutor. Mr. Carnahan stated that as far back as 1990 the Prosecutor’s Office was being funded through user fees and that over the years the user fee fund “steadily declined,” both through changes in state law and in the change of elected prosecutors. Mr. Carnahan also stated that paying Prosecutor’s Office employee salaries through court costs and drug interdiction fees “was a temporary move” and will “likely be gone by April [2018] or sooner.” *Proponent’s Exhibit 5.*

29. Mr. Lechner also provided as evidence at the hearing an e-mail exchange between him and Kent Utt, President/CEO of the Knox County Development Commission (“KCDC”). This e-mail exchange included a statement from Mr. Utt that, in preparation for the November 8 hearing, he included as evidence estimates of the KCDC’s 2015 master plan for the expansion of the US 41 Industrial Park, including infrastructure costs for certain properties. Attached to this e-mail was “Exhibit A,” a list of cost estimates for the KCDC Industrial Park, which indicated itemized costs for projects including the “Lewis Property,” the “Real Estate Acquisition on US 41,” and the “Mini Park US 41 Industrial Park.” This “Exhibit A” also showed a cost estimate for the Knox County Partners – Education and Workforce Advisory Council, as well as a project to build a 40,000 square foot “expandable/Shell Building in US 41 Industrial Park.” This document showed a total cost for all US 41 Industrial Park projects to be \$7,699,382, or \$6,917,882 after accounting for costs already made for these projects. *Proponent Exhibit 6.*

B. Summary of Objectors’ Contentions

30. Mike Bauer testified that there is no need for the tax. *Testimony of Mike Bauer; Audio Recording of Hearing at 53:48.*

31. Tom Yochum testified to the County’s adoption of the Fund. He stated that the County Council announced in July that there would be a public meeting on the Fund in the evening prior to the Commissioners’ meeting, but that the Council’s meeting had been postponed to 9:30 a.m. on July 28. Mr. Yochum stated that at this morning meeting, Ben Roeger presented on the economic development proposal. Mr. Yochum then claimed

⁴ This refers to HEA 1006-2015 which, among other things, changed the laws regarding state financial aid toward local correctional facilities.

that when Mr. Roeger was asked whether the tax rate would be \$0.0333 or \$0.01675, Mr. Roeger responded the rate would be what was needed to recoup the money. Mr. Yochum then stated that the legal advertisement for the Fund advertised a rate of \$0.0333, although the Council then adopted a rate of \$0.0167 in the County's budget. Mr. Yochum then said he pays \$29.86 per acre in property tax. Regarding whether the Fund is a new tax, Mr. Yochum claimed the legal advertisement for the Fund and the Indiana Code both say the Fund will be funded by a tax. Mr. Yochum stated that the County's reserves are sufficient, continuing that the CEDIT fund balance is \$3.9 million, COIT fund balance \$3.1 million, \$3.7 million in rainy day fund, \$452,000 in tax sale redemption, \$272,000 in tax sale surplus, and cumulative bridge fund balance of \$1.6 million. Finally, Mr. Yochum stated that the County's need for the Fund is simply because it can go up to "\$0.167."⁵ *Testimony of Tom Yochum; Audio Recording of Hearing at 54:28.*

32. Tim Ellerman testified that he is a member of the County Commissioners and was the lone 'no' vote on the proposed Fund. He stated that there was no need for the Fund, that it is a new line item as a property tax and will be perceived as such by the taxpayers, that the State has imposed a ten cents per gallon increase on gas tax, and that the assessed value is being deliberately increased to get around the property tax caps.⁶ He then said that although the County may need money, in this case the County has not made any cuts but rather took on more employees and salary increases. He then said that in 2015 the City of Vincennes voted on the local option income tax to fund a new jail, and as part of an agreement with the City the County put forward money, that the County has already spent the money that the Fund would be used for, and that one Councilmember threatened other members to support the tax. Regarding for the Fund, Mr. Ellerman stated that the tax will generate \$3 million over 10 years⁷, while the tax increment financing agreement with Duke Energy produces \$400,000 per year which has not been budgeted by the Council. Mr. Ellerman also stated that the County has a reserve of \$15.27 million with \$22 million in excess funds. He also stated that because of the increases in assessed values, realtors have contacted him expressing opposition to the Fund. Finally, he stated that the Fund could be handled but for tax increases and increases in assessed value. *Testimony of Tim Ellerman; Audio Recording of Hearing at 1:01:15.*

33. Stacy Allen testified that it is a new tax because it is a tax increase. He stated that he helped gather signatures for the objection petition and hoped to have gotten more signatures. He also stated that there should have been a referendum on the Fund, that the County should watch its spending, and that the County is deliberately increasing the

⁵ For the statutory rate limits to the Fund, see paragraph 6, above, and footnote 31, below.

⁶ Mr. Ellerman also stated his objection to the manner of notice the Department gave for this hearing. Cf. *Objector Exhibit 1*. Specifically, he claimed that notice was not received until the Monday prior to the hearing. Ind. Code 6-1.1-41-7 states that the Department shall send notice "by mail with prepaid postage to the county auditor and the taxpayers at their usual place of residence at least five (5) days before the hearing." The Department mailed the notices out on November 1, 2017. Hence, the notices were sent by mail at least five days before the hearing. The objection notwithstanding, the Department sufficiently complied with the requirements of the statute in mailing the notices.

⁷ Mr. Ellerman appears to have based his claim assuming a taxable assessed value of \$1,851,709,640 and a tax rate of \$0.0167 per \$100 assessed valuation, as indicated by his own notes. See *Objector Exhibit 2*.

assessed values to get around the property tax caps. *Testimony of Stacy Allen; Audio Recording of Hearing at 1:11:50.*

34. After the hearing, the Department received a letter from Earl Pahmeier stating his objections to the Fund. He stated that the Fund will result in property owners paying the tax levy and questioned the wisdom of collecting tax revenue that would go into a restricted fund. He also stated that the Proponents made contradicting statements about the current tax liability in 2017 due to the Fund not being established.⁸ He then stated that the County should live within its means and not tax residents who chose to invest in the County. *Objector Exhibit 4.*

35. After the hearing, the Department received a letter from Kevin Emmons stating his objections to the Fund. Mr. Emmons testified that he owns rental properties in Knox County through his business, Cherokee Properties, and is a member of the landlord association. He then stated that “some of the people speaking did not understand that the funds from the State are actually generated by our property taxes,” going on to say that the Proponents contradicted themselves by saying the Fund is not a tax but would only cost them “a few dollars more in taxes.” He stated that Mr. Lechner’s comment that the County would have cut its budget if the Fund is not implemented as a further indication the proposed Fund was a tax. He then stated that the Fund will have an impact on him and other local business owners. *Objector Exhibit 5.*

36. After the hearing, the Department received a letter from Larry Hancock stating his objections to the Fund. Mr. Hancock testified that he is a farmer in northern Knox County and that he is against the Fund because the Fund will be used generally to fund development in the City of Vincennes and for “pet projects” of the county commissioners and not the public good. *Objector Exhibit 6.*

ANALYSIS

37. For purposes of this Analysis, the Department will limit its discussion of the Fund and the stated objections to testimony and claims material to the Fund and for which corroborating evidence has been provided or which is necessary to provide. Claims which are irrelevant to the Fund adoption, especially ones which demand corroborating evidence but where none was provided, will not be considered.

38. Along similar lines, the Department declines to consider the claim that the Objectors’ petitions were improper.⁹ No evidence was provided corroborating the claim that the Objectors used lies or other improper means in obtaining signatures. No evidence was also provided that many of the signers were members of the Vincennes Fire Department,

⁸ As written in the letter, “One individual pointed out that even though the tax was in effect in past years, the taxpayers weren’t required to pay it this year; but that upon reinstatement of the tax, the property owners would incur a tax increase based on a percentage of the assessed value. However, another supporter explained that this is money that is currently being collected and put into the general fund.” *Objector Exhibit 4.*

⁹ See *Testimony of Bob Lechner; Testimony of David Shelton.*

and in any event the Department fails to see how such a charge is relevant. Even if such evidence was provided, the Department has no ability to act on the evidence. Pursuant to IC 6-1.1-41-6, the county auditor is responsible for certifying a copy of the petition to the Department. Upon receipt of the certified petition, the Department shall schedule a public hearing on the matter. Given that the Department is not provided discretion on scheduling a public hearing upon receipt of a certified petition from the county auditor, the Department believes it is not within its statutory authority to evaluate the validity of the petition once certified to the Department by the county auditor. Hence, the Department cannot decide on the appropriateness of the petition, itself.

39. The Department also declines to consider the claim that the County is deliberately increasing property assessments to get around the property tax caps.¹⁰ No evidence has been presented supporting this charge, and the claim is ultimately irrelevant to the propriety of the Fund. The Department therefore, will not entertain it.

40. To date, no evidence has been presented that the County had violated any procedural requirement in the adoption of the proposed Fund.

41. As a preliminary matter, Senate Enrolled Act 321-2016 (“SEA 321”) amended the law regarding how maximum property tax levies are set. Specifically, prior to 2017, a county would receive an adjustment to its maximum property tax levy based on a comparison between the county’s cumulative capital development fund and the excess property taxes imposed by the county in certain cumulative funds above what the county imposed in 1984.¹¹ Specifically, the county would have the lesser of the following treated as outside the county’s maximum property tax levy under IC 6-1.1-18.5-3: (1) the revenue generated by the maximum levy for the cumulative capital development fund; or (2) the difference between the revenue generated for the ensuing year for the county’s cumulative fund levies and the unit’s 1984 cumulative fund levies (“the 1984 formula”). Starting in the pay-2017 budget year, the levy adjustment would be based only on the county’s cumulative capital development fund.¹²

42. Therefore, the Department, pursuant to the governing law, set out a policy whereby a unit is not entitled to have its Fund property tax levy be adjusted, that is, treated as outside the maximum property tax levy for the unit, without an actually established Fund. The Department believed, and still believes, that this policy better comports with Indiana law as affected by SEA 321. While a county is not required by IC 36-9-14.5 to establish a Fund and may choose to spend money out of its general fund toward capital projects, doing so would not allow the county to apply a levy and rate pursuant to IC 36-9-14.5-6 that is outside the maximum levy without a Fund in place. It is for this reason that the Department released a memorandum and gave presentations describing this change.¹³ It

¹⁰ See *Testimony of Tim Ellerman; Testimony of Stacy Allen*.

¹¹ See IC 6-1.1-18.5-9.8(a) (effective until July 1, 2016). The provision also applied to municipalities.

¹² IC 6-1.1-18.5-9.8(a) (current version, effective July 1, 2016).

¹³ Memo of Commissioner Schaafsma to All Political Subdivisions re: Budget Streamlining, dated March 30, 2016, http://www.in.gov/dlgf/files/pdf/160330_-_Schaafsma_Memo_-_Budget_Streamlining.pdf; Presentation of Commissioner Schaafsma, “Local Government Budget Streamlining,” given at the Association of Indiana Counties District Meetings in April 2016, http://www.in.gov/dlgf/files/pdf/160422_-

had also notified all counties affected by this policy, including the County, that starting in pay-2018 they must have a Fund in place to receive the adjustment.¹⁴

43. The Department recognizes that the County did not have a Fund established effective for the pay-2017 budget year, and that pursuant to SEA 321 and the Department's policy the County would not have had a levy adjustment based on its cumulative capital development fund levy, which was effectively \$0. Prior to SEA 321, the County received an adjustment based on the 1984 formula under the old version of IC 6-1.1-18.5-9.8(a). The Department also recognizes that Section 64 of House Enrolled Act 1450-2017, effective April 28, 2017, entitled the County to an increase to its maximum permissible ad valorem property tax levy by an amount equal to three hundred nineteen thousand nine hundred sixty dollars (\$319,960) for pay-2018 taxes. For pay-2019 taxes, the County's maximum permissible ad valorem property tax levy shall then be reduced by this amount. As brought out by testimony at the hearing, the County adopted the Fund to receive the levy adjustment following the change in the law under SEA 321.¹⁵

44. The Objectors' petition stated that their main objection to the Fund is that there is no need for the Fund. More accurately stated, that the needs the Proponents put forth for the Fund are trivial, or not really needs, or can be funded in some other way not requiring an increase in property taxes. The Department gives deference to local officials as to whether a need exists for a Fund. The County has intimate knowledge of its own books, its own needs and projects, and has the resources of financial advisors to be able to make the decision whether a Fund is needed. The Department cannot override the judgment of the County if it was determined that, in the Department's own view, the establishment of the Fund is unnecessary.

45. Part of the local controversy surrounding this Fund has to do with the Objectors' belief that the Fund will result in a new tax and the Proponents, specifically the County officials, stating that it simply earmarks certain revenue for particular uses and is not a new tax.¹⁶ Whether a levy imposed for the Fund is a "new tax" or not is irrelevant for purposes of the Department's review, as the Department is limited to reviewing the establishment of the Fund, itself. In fact, the Objectors unnecessarily seem to conflate the Fund with the tax, itself. Even assuming that the Objectors are right and the Fund and resulting levy is a "new tax," that does not have any bearing on whether the Fund itself is legally valid. It is a matter for the courts and not the Department to decide any legal issue surrounding the nature of the Fund as a "new tax."

Schaafsma Presentation - Local Government Budget Streamlining.pdf. The presentation was also given to the Summer County Auditors Conference, a meeting of county councils, and other conferences through summer 2016.

¹⁴ As of the time of this Order, all affected counties have adopted a Fund.

¹⁵ See, e.g., *Testimony of Bob Lechner*.

¹⁶ Based on Proponents' testimony, prior to the adoption of the Fund, the County had levied for the taxes for which this Fund has been established to the general fund. *Testimony of Ben Roeger; Testimony of Bob Lechner; Testimony of Nichole Like*. Other proponents had stated that this simply moves part of the general fund levy into the Fund. *Testimony of David Shelton; Testimony of Kellie Streeter; Testimony of Bob Slayton*.

46. The County, in its published notices and resolution, stated that the purpose of the Fund is “For all uses as set out in IC 36-9-14.5.” *Notice of Public Hearing; Resolution; Notice of Adoption*. These uses include, but are not limited to, the acquisition and construction of buildings for public purposes¹⁷; the building, remodeling, and repair of park and recreation facilities¹⁸; the construction, remodeling, and repair of courthouses¹⁹; the construction, repair, remodeling, enlarging, and equipment of jail and juvenile detention facilities, and the acquisition of motor vehicles for community corrections programs²⁰; and the construction, maintenance, and repair of bridges located in the county²¹. Money in the Fund may also be spent for purposes related to protecting “the public health, welfare, or safety in an emergency situation that demands immediate action” once certain conditions are met.²² Proponents provided testimony and written evidence showing that the County intends to use the Fund for renovating its county courthouse and jail facilities²³, several county buildings and storehouses²⁴, rehabbing park and recreation facilities²⁵, and bridge repair.²⁶ Although other evidence was presented showing the need for economic development²⁷ and funding for the Prosecutor’s Office²⁸, neither side presented evidence showing that the County intends to use the Fund for those purposes. Indeed, establishing the Fund would make more general fund money available for those purposes, rather than dedicating general fund revenue toward the previously stated purposes.

47. Some of the Objectors signed the petition due to the levy or the tax rate that will be imposed on their property. *Objectors Petition*. To this, the Department must too give deference. The State of Indiana has delegated its authority to levy taxes on property to local governments to raise revenue for their own financial support.²⁹ The County may adopt a Fund following the procedures laid out in law.³⁰ Provided that the County has adopted the Fund in a manner consistent with state law, including not exceeding the rate limitation provided in statute³¹, and that the Objectors have not given any evidence to the

¹⁷ IC 36-9-16-2.

¹⁸ IC 36-10-3-21; IC 36-9-14.5-2.

¹⁹ IC 36-9-14; IC 36-9-14.5-2.

²⁰ IC 36-9-15; IC 36-9-14.5-2.

²¹ IC 8-16-3; IC 36-9-14.5-2.

²² IC 36-9-14.5-8(c).

²³ *Proponent Exhibits 1 & 3*. Peter Haskins’s testimony, though pertaining to the county jail, does not pertain to the condition of the county jail, per se, but rather programs occurring within the county jail. Such programs are unrelated to the purpose of the Fund.

²⁴ *Proponent Exhibit 1*.

²⁵ *Testimony of Rhonda Foster; Proponent Exhibit 4*.

²⁶ *Testimony of Kellie Streeter*.

²⁷ *Proponent Exhibit 2*.

²⁸ *Proponent Exhibit 5*.

²⁹ See IC 6-1.1-2-3.

³⁰ See IC 6-1.1-41 (cumulative fund adoption procedures); IC 36-9-14.5 (county cumulative capital development fund, generally). One Objector testified that maybe the County should put the new Fund, or at least the tax levy itself, to a referendum. *Testimony of Stacy Allen*. Such a process is not available for cumulative funds under current law.

³¹ IC 36-9-14.5-6. A county in which a local income tax is in effect on January 1 of the year in which the Fund is established or reestablished can have a rate not exceeding \$0.0167 per \$100 of assessed valuation

contrary, the Department cannot say that the levy or the tax rate for the Fund is improper. Where the tax rate adopted exceeds the statutorily allowed amount, the Department may modify the proposed Fund pursuant to IC 6-1.1-41-9.

48. As a general practice, however, the Department does not inject itself into local affairs and therefore is hesitant to override the policy decisions of elected officials. The Department in this case does not see a sufficient reason to depart from that practice. The Objectors have not pointed to any purpose not permitted by statute that the County intends to use for the Fund. Nor did the Objectors point to any improper procedure the County engaged in when adopting the Fund. The Department does not deny that individuals may disagree as to the appropriateness of the purposes for which the Fund's revenue may be used or the necessity of the projects that may be funded from the Fund. These differing opinions notwithstanding, the adoption of the Fund was properly and lawfully done.

49. Finally, the Department considers the Fund to have been established by the County this year, meaning that the Fund has not been in existence for more than one (1) year. Therefore, pursuant to IC 36-9-14.5-6, the maximum tax rate the County could adopt for the Fund for pay-2018 is \$0.0167 per \$100 assessed valuation. Although the County adopted the Fund at the maximum rate of \$0.0333 and advertised the same in its Notice of Adoption, the statute does not allow the rate to be at its maximum allowable amount until after the first year of the Fund's establishment. This, however, does not invalidate the County's action. Rather, it merely necessitates the reduction of the maximum property tax rate in the first year, which the County has apparently acknowledged in adopting its budget.³²

CONCLUSION

50. After weighing the testimony and evidence, the Department is not persuaded by the Objectors and concludes that there is no legal basis for denying the County's proposed Fund establishment.

51. Consequently, the Department hereby **APPROVES** the County's proposed Fund establishment.

52. The Department approves the levying of a tax in the amount of one and sixty-seven hundredths cents (\$0.0167) per one hundred dollars (\$100) of assessed valuation for 2018 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. The Department notes the County has advertised and adopted the rate and the appropriate levy amount as part of its 2018 budget in compliance with the provisions of

(if the Fund had not been previously established) or \$0.0333 per \$100 of assessed valuation (if the Fund is being reestablished after its first year).

³² See *Testimony of Tom Yochum*. The County's submitted Form 4, the budget ordinance uploaded onto the Indiana Gateway for Local Government Units website, indicates that the County adopted a Fund tax rate of \$0.0167.

IC 6-1.1-17-3. Fund dollars may only be used for those purposes outlined in IC 36-9-14.5.

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

Dated this 5th day of December, 2017.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE


Wesley R. Bennett, Commissioner