

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE
Indiana Government Center North Room N1058 (B)
Indianapolis, Indiana 46204

IN THE MATTER OF TAX REQUEST OF)
FLAT ROCK-HAWCREEK SCHOOL)
CORPORATION (BARTHOLOMEW) No. 07-065
COUNTY) FOR APPROVAL OF A LEASE)
WITH FLAT ROCK-HAWCREEK MULTI-)
SCHOOL BUILDING CORPORATION)

A petition was filed on behalf of the Board of School Trustees of Flat Rock-Hawcreek School Corporation, Bartholomew County, for approval of a lease rental agreement with the Flat Rock-Hawcreek Multi-School Building Corporation providing for the lease of a school building for a term of twenty-four (24) years from the date on which the lessor acquires fee simple title to the real estate describe in Exhibit A of the Lease at a lease rental of \$803,000 per payment during renovation, commencing on June 30, 2009. The first full rental installment shall commence on the date that the school building is completed and ready for occupancy or June 30, 2010, whichever is later, at an annual lease rental of \$1,606,000, with an option to purchase such building. The total project costs are \$19,675,000.

The Department of Local Government Finance (“Department”), pursuant to Executive Order 05-19, reviewed the proposed lease rental agreement and the Project, and applied the factors set forth in IC 20-46-7-11 and Guidance for Review of School Building Project Financing. The school corporation has complied with the appropriate provisions of Indiana Code section 6-1.1-20 and Indiana Code chapter 20-46-7. After careful consideration of all facts, the Department finds as follows:

FINDINGS:

1. On May 10, 2007, the Board of School Trustees of Flat Rock-Hawcreek School Corporation (“School Board”) published legal notice of a meeting to consider adoption of a resolution making a preliminary determination to enter into a lease. The public hearing on the preliminary determination was scheduled for May 22, 2007 at 7:00pm. *Notice of 1028 Hearing and Preliminary Determination Hearing*. Thus, the requirements of Indiana Code section 6-1.1-20-3.1(1) were met.

2. Since the School Board proposed to construct, repair, or alter a school building at a cost of more than one million dollars (\$1,000,000) that would be financed by entering into a lease agreement under Indiana Code section 20-47-3-9 through Indiana Code section 20-47-3-12, the School Board was required to hold a public hearing at which explanations of the potential value of the proposed project to the school corporation and to the community must be given and at which interested parties may present testimony and questions. Notice of the public hearing, or 1028 hearing, was published May 10, 2007 with the preliminary determination notice. The 1028

hearing and preliminary determination were held on May 22, 2007 at 6:30pm. *1028 Resolution*. Thus, the requirements of Indiana Code section 20-26-7-37 were met.

3. At the May 22, 2007 preliminary determination and 1028 hearings, the members present at the meeting were as follows: John Baute, Bill Hill, Bill Lentz, Tom Miller, and Greg Spurling. Tom Miller made the motion to adopt the 1028 Resolution, which was seconded by Greg Spurling. The motion carried five (5) to zero (0). *Excerpts from Minutes of a Meeting of the Board of School Trustees, Flat Rock-Hawcreek School Corporation*.

4. Per the 1028 Resolution, the projected hard cost of construction of the renovation of, additions and improvements to the Hauser Jr.-Sr. High School is \$11,475,750 and for Hope Intermediate School is \$5,354,560 and projected soft cost of \$1,449,690 (including capitalized interest) and projected nonconstruction costs of \$495,000 resulting in total project costs of \$18,775,000. There is an anticipated impact on the Debt Service Fund tax rate of 78¢ per \$100 assessed valuation based on an estimated \$180,000,000 assessed valuation, to be partially implemented in 2008 and fully implemented in 2014. *1028 Resolution*.

5. At the conclusion of the public testimony and questions and during the regular meeting, the School Board considered the preliminary determination resolution to issue bonds and enter a lease in order to provide for the renovation of, additions and improvements to the Hauser Jr.-Sr. High School and Hope Intermediate School buildings. Bill Lentz made the motion to adopt the preliminary determination, which was seconded by John Baute. The motion carried five (5) to zero (0). *Excerpts from Minutes of a Meeting of the Board of School Trustees, Flat Rock-Hawcreek School Corporation*.

6. The notice of the preliminary determination to enter into the lease, which was published on May 25, 2007 and an amended notice of adoption of the preliminary determination shortly thereafter, included the required information:

a. The maximum term of the lease (*24 years*).

b. The maximum principal amount of the bonds (*\$18,775,000*) or the maximum lease rental for the lease (*\$1,606,000*). However, because the bonds could not be sold in 2007, capitalized interest accrued and the total project cost increased to \$19,675,000. *Commissioner Musgrave Letter to Jim Ball, February 4, 2008*.

c. The estimated interest rates that will be paid (*4% to 6%*) and the total interest costs associated with the lease (*\$14,986,000*).

d. The purpose of the lease (*to provide for the renovation of, additions, and improvements to the Hauser Jr.-Sr. High School and Hope Intermediate School buildings*).

e. A statement that any owners of real property or registered voters within Flat Rock-Hawcreek School Corporation who want to initiate a petition and remonstrance process against the proposed debt service or lease payments must file a petition not later than thirty (30) days after publication of the original notice on May 25, 2007.

f. With respect to a lease entered into to open (i) a new school facility; or (ii) an existing facility that has not been used for at least three (3) years and that is being reopened to provide additional classroom space; Flat Rock-Hawcreek School Corporation does not expect to incur additional annually operating costs due to this project for which a new facility appeal may be sought and currently does not expect to appeal for an increased adjusted base levy. *Amended Notice of Adoption of Preliminary Determination.*

7. A sufficient application was filed by taxpayers for the petition/remonstrance process. *Petition of School Patrons.* On October 25, 2007, the Bartholomew County Clerk, acting on behalf of the county voter registration office, certified that she examined 125 counterparts of the petition in favor of and the 38 counterparts of the remonstrance against the proposed renovation of and additions and improvements to Hauser Jr.-Sr. High School and Hope Intermediate School Buildings. There were 1,524 total qualified petitioners and 542 total qualified remonstrators. *Voter Registration Office Certificate.*

8. On or about October 22, 2007, the school corporation's petition requesting the Department's approval to enter into a lease rental agreement was received by the Department. *Letter to Ms. Kaitlin Boldt, from Thomas W. Peterson;* Ind. Code § 20-46-7-8. The filing of the petition was within twenty-four (24) months after the first date of publication of notice of a preliminary determination to enter into the lease rental agreement, which occurred on May 25, 2007 and the amended notice of adoption of the preliminary determination on June 12, 2007. Ind. Code § 6-1.1-20-3.1(2).

9. Flat Rock-Hawcreek School Corporation is required by law to obtain approval by the Department before the school corporation may incur indebtedness or enter into the lease agreement. Ind. Code § 20-46-7-8.

10. The Department is authorized to approve, disapprove, or modify then approve Flat Rock-Hawcreek School Corporation's proposed lease rental agreement. Before the Department approves or disapproves a proposed lease rental agreement, the Department may seek the recommendation of the school property tax control board ("Control Board"). Ind. Code § 20-46-7-9.

11. Flat Rock-Hawcreek School Corporation conducted a feasibility study for this project in the summer of 2001 by John E. Reisert, EdD. The cost of the feasibility study was \$1,200. The impact of year-round school was not included in the feasibility study. However, on November 6, 2007, the School Board adopted a resolution acknowledging it held two public hearings on the feasibility of year round school. *Hearing Information Sheet, April 7, 2008, page 2 of 16;* Ind. Code § 20-46-7-10; *Year-Round School Resolution.*

12. On December 6, 2007, officials from the Flat Rock-Hawcreek School Corporation appeared before the Control Board and the following items were discussed:

a. School officials requested approval of a lease rental agreement with maximum annual lease rental payments of \$1,606,000 for a term of 24 years. Total project costs are \$19,675,000. The tax rate impact is \$0.7000 with no new facility appeal expected. The remonstrance and petition process resulted in a vote of 1,524 yeas and 542 nays. *Control Board Meeting Minutes,*

<http://www.in.gov/dlgf/boards/school/minutes/2007/pdf/120607Minutes.pdf>.

b. The project involves minor reconfiguration and improvements at the existing Hope Elementary School, major renovation and reconfiguration of Hauser Jr.-Sr. High School, and the construction of a new building between and connected to the two schools which are located on the same site. The Hope Elementary School will become an intermediate school, grades 3-6. The new building will be an elementary school, grades K-2, and also contain some space which will be used by Intermediate and Jr.-Sr. High School students. The existing Cross Cliff Elementary will be removed from service, which means the building will be sold or disposed of within the next three years. *Id.*

c. Flat Rock-Hawcreek School Corporation has about 1,100 students. The population of the two townships equals about 6,000 people. However, Morris Mills, Control Board member, noted the school corporation was showing capacity for 1,740 students in a school corporation of only 1,100 students. *Id.*

d. Richard Besinger, Control Board member, said that from 2002-2003 school year to the present, Flat Rock-Hawcreek has had a 5.3% decrease in enrollment. The Superintendent did not dispute the decrease in enrollment. *Id.*

e. The Control Board rejected the motion to approve the project by a vote of three (3) to six (6). *Id.*

13. On March 20, 2008, the Control Board, for the second time, reviewed the Flat Rock-Hawcreek project. The following was discussed:

a. Thomas Peterson, bond counsel, stated that the maximum tax rate that would be fully implemented was previously disclosed at \$0.78, or 78¢ per \$100 of assessed value. However, he explained that the school corporation has other debt retiring that will likely lower the tax rate impact from the project. http://www.in.gov/dlgf/newFiles/SPTCB_03-20-08.pdf.

b. Mr. Peterson stated the school corporation reduced the size of the project by removing four (4) classrooms, and reduced the number of basketball courts/gyms from three (3) to two (2), which is a reduction in the physical education space from the originally proposed project. The reduction will reduce the cost of the original project by \$1.2 million and allow the school corporation to reduce the term of the bond issue by one year, which reduces the term from twenty-four (24) years to twenty-three (23) years. Additionally, the total project costs are now \$18,475,000. *Id.*

c. Mary Price, a remonstrator, spoke at the meeting and stated that the school district's attendance dropped in 2007-2008 school year from 1095 students to 1054. Cheryl Monroe, a remonstrator, also spoke at the hearing and said the projected enrollment for the 2007-2008 school year was 1077, but the current enrollment is actually only 1054. These assertions about declining enrollment went unchallenged by school officials. *Id.*

d. Ms. Price further stated that the increase in the tax rate from the project will be largely paid by homeowners and farmers since only 1.1% of the school district contains industrial properties. This assertion also went unchallenged by school officials. *Id.*

e. Joseph Bronnert, a Control Board member, stated that the remonstrators made a very compelling argument against approval of the school project. *Id.*

f. Richard Besinger, a Control Board member, stated he had a problem with the fact the school corporation had enrollment at roughly 1100 students and their capacity for the original plan was for 1840 students. He said with the four classrooms removed from the project, the modified plan will still have a capacity for 1720 students, which is much more than the school corporation's current capacity. *Id.*

14. On April 17, 2008, the Control Board, for the third time, reviewed the Flat Rock-Hawcreek project once again. The Control Board forwarded the project to the Commissioner of the Department without a recommendation for approval or disapproval by a vote of four (4) to two (2).

15. Since the Department received the School Board's petition for approval on or about October 22, 2007, the Department was required to render a decision within three (3) months after the date of receipt; however, the Department could extend this three (3) month period by an additional three (3) months, if the notice of the extension was given to the superintendent at least ten (10) days before the end of the original three (3) month period. On January 11, 2008, the Department notified Superintendent Deardorff of the three (3) month extension period. *Letter from Pam Eustace to Mr. Deardorff*, January 11, 2008. As a result of the extension, the Department is required to render a decision by April 22, 2008.

16. In determining whether to approve or disapprove a school building construction project, the Department and the Control Board must consider the **current and proposed square footage of school building space per student, and the cost per square foot of the school building construction project.** Ind. Code § 20-46-7-11:

a. new elementary school (K-2):

(1) *Square feet of new construction:* 77,430 (66% of facilities related to academic)

(2) *New Enrollment Capacity:* 240 (increase from current enrollment of 230)

(3) *Subtotal general construction cost:* \$8,403,000 (including professional fees, land, building, and equipment, insurance = \$9,457,000).

(4) *Total Estimated Costs of Construction per square foot:* \$108.52

(5) *Total Estimated Costs of Construction per Student at New Capacity:* \$35,012.50

b. remodeling of existing structure (elementary/middle school)(grades 3-6):

(1) *Square feet of remodeling of existing structure:* 53,891 (69% of facilities related to academic)

(2) *New Enrollment Capacity:* 350 (current enrollment 325; current capacity 400)

(3) *Subtotal general construction cost:* \$1,430,748 (including professional fees, land, building, and equipment, insurance = \$1,518,748).

(4) *Total Estimated Costs of Construction per square foot:* \$26.55

(5) *Total Estimated Costs of Construction per Student at New Capacity:* \$4,087.85

c. remodeling of existing structure (middle/high school):

(1) *Square feet of remodeling:* 106,749 (80% of facilities related to academic)

(2) *New Enrollment Capacity:* 650 (current enrollment 567; current capacity 600)

(3) *Subtotal general construction cost:* \$6,270,000 (including professional fees, land, building, and equipment, insurance = \$6,990,000).

(4) *Total Estimated Costs of Construction per square foot:* \$58.88

(5) *Total Estimated Costs of Construction per Student at New Capacity:* \$9,646.15.

Hearing Information Sheet, April 7, 2008.

17. In determining whether to approve or disapprove a school building construction project, the Department and the Control Board must consider the **enrollment patterns within the school corporation**. Ind. Code § 20-46-7-11.

a. The feasibility study for the school corporation was completed seven (7) years ago.

b. Morris Mills, Control Board member, stated the school corporation was showing capacity for 1,740 students in a school corporation of only 1,100 students, and that no enrollment change was expected. *Control Board Minutes*, <http://www.in.gov/dlgf/boards/school/minutes/2007/pdf/120607Minutes.pdf>

c. Richard Besinger, Control Board member, said from the 2002-2003 school year to the present, Flat Rock-Hawcreek School Corporation had a 5.3% decrease in enrollment. *Id.*

d. These statements by Mr. Mills and Mr. Besinger regarding enrollment and current student capacity were unchallenged by the school corporation. *Id.*

18. In determining whether to approve or disapprove a school building construction project, the Department and the Control Board must consider the **age and condition of the current school facilities**. Ind. Code § 20-46-7-11. Cross Cliff Elementary (K-2): 32,580 square feet,

constructed in 1973, is in reportedly “fair” condition. Hope Elementary (3-6): 53,891 square feet, constructed in 1989, is in “good” condition. Hauser Jr.-Sr. High School (7-12): 103,176 square feet, constructed in 1965, is in “fair” condition. Flat Rock-Hawcreek, *Present Facilities*.

19. In determining whether to approve or disapprove a school building construction project, the Department and the Control Board must consider the **effect that completion of the school building construction project would have on the school corporation’s tax rate**. Ind. Code § 20-46-7-11.

a. The estimated tax rate impact estimated at the 1028 resolution was \$0.7800, or 78¢ per \$100 of assessed valuation. *Hearing Information Sheet*, page 2 of 16, April 7, 2008.

b. The maximum tax rate impact of this project on the Control Board hearing information sheet is \$0.7000, or 70¢ per \$100 of assessed valuation. *Id.*, page 11 of 16, April 7, 2008.

c. The school corporation’s current debt service tax rate is \$0.2273, or approximately 23¢ per \$100 of assessed valuation. *Id.*

d. The total debt service fund tax rate estimated by the school corporation in the first year of repayment for this project is \$0.6200, or 62¢ per \$100 of assessed valuation, in 2009. *Id.*

e. The highest total debt service for all debt occurs in 2011 when the total debt service fund tax rate reaches \$0.7400, or 74¢ per \$100 of assessed valuation. *Id.*

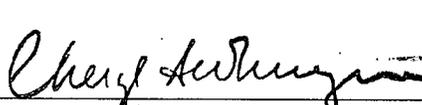
f. However, the school corporation maintains that due to debt retiring and reduction of the overall cost of the project to \$18,475,000, the estimated tax impact will be less than what was previously advertised. *Control Board Meeting*, March 20, 2008, http://www.in.gov/dlhf/newFiles/SPTCB_03-20-08.pdf.

20. In determining whether to approve or disapprove a school building construction project, the Department and the Control Board must consider **any other pertinent matter**. Ind. Code § 20-46-7-11. The Department considered the alternative plans submitted by the remonstrators, and the possible circuit breaker effects of this project on the county, school district, and taxpayers.

21. The Department presented this project to the Control Board three times: December 6, 2007; March 20, 2008; and April 17, 2008. In all three instances, the Control Board refused to recommend approval for the project despite its multiple reviews of the project and discussions with school officials. The Department spoke to school officials and remonstrators during the lengthy review period and reviewed all of the material presented to it by both school officials and remonstrators. The Control Board’s actions in denying the project in its first review, and refusal to provide a recommendation after its third review of the project shows there are serious concerns about this project, even after its modification. Thus, the Department will not allow this project to go forward. In addition to the Control Board’s actions after multiple reviews of the original and modified projects, the declining enrollment in the school district, lack of growth in the district, and the effects of the increase in the tax rate on homeowners and farmers in this rural community influenced this decision.

WHEREFORE, based upon the above findings of fact and applicable law, the petition filed on behalf of the Board of School Trustees of Flat Rock-Hawcreek School Corporation, Bartholomew County, for approval of a lease rental agreement with the Flat Rock-Hawcreek Multi-School Building Corporation for a term of twenty-four (24) years at an annual lease rental payment of \$1,606,000, and any proposed modified version of the petition presented to the Department, is hereby DENIED.

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

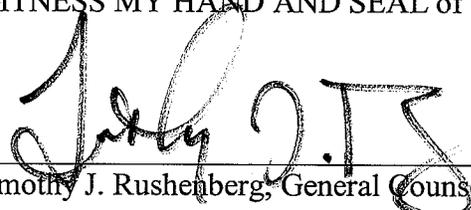
 T.S 4/18/08

Cheryl A.W. Musgrave, Commissioner

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

I, Timothy J. Rushenberg, General Counsel for the Department of Local Government Finance, hereby certify that the above is an order of the Commissioner of the Department of Local Government Finance made this date in the above-entitled matter and that the Commissioner has personally signed the same under her statutory authority.

WITNESS MY HAND AND SEAL of this Commissioner on this the 18th day of April, 2008



Timothy J. Rushenberg, General Counsel