

**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 RE-ESTABLISHMENT)
OF AN EQUIPMENT REPLACEMENT FUND BY) **OBJ 20-002**
BROWNSBURG FIRE PROTECTION TERRITORY)**

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana law allows the participating units of a fire protection territory to establish or re-establish an equipment replacement fund (“Fund”) pursuant to IC 36-8-19-8.5 and IC 6-1.1-41.
2. The Fund may be used to purchase fire protection equipment, including housing, that will be used to serve the entire territory. The Fund may also be used to pay off debt incurred by the participating units to purchase fire protection equipment. The maximum property tax rate that may be imposed for the Fund is \$0.0333 per \$100 of assessed valuation.
3. The requirements and procedures specified in IC 6-1.1-41 concerning the establishment or re-establishment of a cumulative fund, the imposing of a property tax for a cumulative fund, and the increasing of a property tax rate for a cumulative fund apply to:
 - a. the establishment or re-establishment of a Fund;
 - b. the imposing of a property tax for a Fund; and
 - c. the increasing of a property tax rate for a Fund.
4. By joint operation of IC 36-8-19-8.5 and IC 6-1.1-41, taxpayers may object to a fire protection territory’s proposed Fund re-establishment.
5. After a hearing on the objection and consideration of the evidence, the Department approves, disapproves, or modifies the proposed Fund re-establishment.

6. As discussed below, taxpayers in the Brownsburg Fire Protection Territory (“Territory”), Hendricks County, timely objected to the Territory’s proposed Fund re-establishment, thereby obligating the Department to conduct a public hearing and issue a determination concerning the Territory’s proposal.

7. For the reasons stated below, the Department **APPROVES** the Territory’s proposed Fund re-establishment.

RELEVANT PROCEDURAL HISTORY

8. Pursuant to IC 36-8-19-8.5, to establish or reestablish a Fund, the legislative bodies of each participating unit must adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township), and the following requirements must be met:

- a. The ordinance or resolution is identical to the ordinances and resolutions adopted by the other participating units.
- b. Before adopting the ordinance or resolution, each participating unit must comply with the notice and hearing requirements of IC 6-1.1-41-3.
- c. The ordinance or resolution authorizes the provider unit to establish the Fund.
- d. The ordinance or resolution includes at least the following:
 1. The name of each participating unit and the provider unit.
 2. An agreement to impose a uniform tax rate upon all of the taxable property within the territory for the Fund.
 3. The contents of the agreement to establish the fund.

9. Indiana Code 6-1.1-41-3 requires a fire protection territory that decides to establish or reestablish a Fund to give notice of the proposal to the affected taxpayers and hold a public hearing on the proposal before presenting it to the Department for approval. Notice of the proposal and of the public hearing must be given by publication in accordance with IC 5-3-1. If such a proposal is adopted, notice of adoption must be published in accordance with IC 5-3-1-2(i) in a manner prescribed by the Department.

10. Pursuant to IC 6-1.1-41-6 and not later than noon 30 days after the publication of the notice of adoption, taxpayers may file a petition with the county auditor stating their objections to a proposed Fund re-establishment. State law is silent as to the number of taxpayers needed to validly object to a fire protection territory’s proposed Fund re-establishment. Upon the filing of the petition, the county auditor must immediately certify the petition to the Department.

11. The Department must, within a reasonable time, fix a date for a hearing on an objection petition and give notice of the hearing to the county auditor and the first ten taxpayers whose names appear on the objection petition.¹

12. After the hearing, the Department must certify approval, disapproval, or modification of the proposal to the county auditor.²

¹ IC 6-1.1-41-7, 8

² IC 6-1.1-41-9

13. The Territory published notice of the public hearing on its proposed Fund re-establishment in the *Hendricks County Republican* on February 27 and March 5, 2020, and in the *Indianapolis Star* on February 29 and March 9, 2020. *Hendricks County Republican Publisher's Claim; Indianapolis Star Publisher's Claim; IC 6-1.1-41-3.*
14. On March 12, 2020, the Territory's participating units (Brown and Lincoln Townships, and the Town of Brownsburg) conducted a public hearing and then adopted a joint resolution on March 12, 2020 re-establishing the Fund at a rate of \$0.0333 per \$100 of assessed valuation. *Hendricks County Republican Publisher's Claim; Indianapolis Star Publisher's Claim; Town of Brownsburg Ordinance #2020-05; Brown Township Resolution to Re-establish a Uniform Rate for the Equipment Replacement Fund for the Brownsburg Fire Territory; Lincoln Township Resolution #2020-02; IC 36-8-19-8.5.*
15. The Territory published notice of adoption of the Fund re-establishment in the *Hendricks County Republican* and the *Indianapolis Star* on March 19, 2020. *Hendricks County Republican Publisher's Claim; Indianapolis Star Publisher's Claim; IC 6-1.1-41-3.*
16. On April 14, 2020, an objection petition signed by at least 10 verified taxpayers was filed with the Hendricks County auditor, who certified it to the Department on April 17, 2020. *Petition Objecting to Tax Rate Increase; E-mail from Nancy Marsh, Hendricks County Auditor, to the Department, April 17, 2020 at 9:41 a.m. (on file with Department); IC 6-1.1-41-6.*
17. The Department scheduled a hearing on the petition for 3:00 p.m. EDT on July 31, 2020 and provided notice of the hearing to the Territory attorney and the first ten taxpayers whose names appeared on the petition. *Notice of July 31 Hearing to Territory attorney; Notice of July 31 Hearing to Taxpayer. IC 6-1.1-41-8.* The public hearing was conducted via teleconference, due to the public health emergency declared by Governor Eric Holcomb on March 6, 2020 and renewed on July 1, 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 #20-34.*
18. The Department conducted the hearing at 3:00 p.m. EDT on July 31, 2020. Department staff member David Marusarz conducted the hearing. *Hearing Officer's Report.*
19. The following testified at the second hearing as opponents:
Nathan Mantlo
Dottie McIntyre
Sabrina Graham
James Murphy
Kurt Disser
20. The following testified at the second hearing on behalf of the Territory:

Tom Kmetz
Marline Breece
Paige Sansone
Larry Alcorn

20. Objectors presented the following exhibits, which are thus part of the Record:
- Objectors' Exhibit A – E-mail from Jim Murphy to the Department, August 4, 2020, 10:09 a.m.
 - Objectors' Exhibit B – Written Statement of Dottie McIntyre, July 29, 2020, 4:37 p.m., read into the record at the July 31 hearing.
 - Objectors' Exhibit C – Written Statement of John McIntyre, July 30, 2020, 10:09 a.m.
 - Objectors' Exhibit D – E-mail from Craig Maners to the Department, July 28, 2020, 5:56 p.m.
 - Objectors' Exhibit E – E-mail from Jim Murphy to the Department, August 14, 2020, 8:58 a.m.
 - Objectors' Exhibit F – E-mail from Kurt Disser to the Department, August 13, 2020, 4:06 p.m., with the following attachments:
 - Objectors' Exhibit G – Written Statement of Nathan Mantlo, dated August 14, 2020, with the following attachments:
 - Objectors' Exhibit H – Copy of the Objection Petition.
 - Objectors' Exhibit I – E-mails from Nathan Mantlo, February 25, 2020 and March 12, 2020, and from Tom Kmetz, March 12, 2020.
 - Objectors' Exhibit J – Copy of Letter from Public Access Counselor to Nathan Mantlo, dated June 25, 2020, with highlights and handwritten notes.
 - Objectors' Exhibit K – E-mail from Kaitlyn Holmecki, Public Access Coordinator, to Nathan Mantlo, June 25, 2020, 10:14 a.m., with handwritten notes.
 - Objectors' Exhibit L – E-mail from Dottie McIntyre to Kaitlyn Holmecki, April 28, 2020, 2:02 p.m., with response by Kaitlyn Holmecki, April 28, 2020, 2:13 p.m.
 - Objectors' Exhibit M – Letter from Tom Kmetz to Kaitlyn Holmecki, no date given.
 - Objectors' Exhibit N – Letter from Emory T. Lencke to Kaitlyn Holmecki, dated August 14, 2020.
 - Objectors' Exhibit O – E-mail from Sabrina Graham to the Department, August 13, 2020, 3:52 p.m.
 - Objectors' Exhibit P – Year-to-Year Comparison of Certified Equipment Replacement Fund Tax Rates for all Fire Territories in Indiana, for years 2016 through 2020, from Indiana Gateway for Local Government Units, retrieved August 1, 2020.
 - Objectors' Exhibit Q – Document entitled “Brownsburg Fire Territory Equipment Replacement Fund 5-Year Plan.”
 - Objectors' Exhibit R – Advisory Opinion of the Public Access Counselor 19-FC-48.

21. Proponents presented the following exhibits, which are thus part of the Record:
- Proponents' Exhibit 1 – E-mail from Tom Kmetz, Brown Township Chair, to the Department, August 5, 2020, 11:46 a.m.
 - Proponents' Exhibit 2 – E-mail from Ann Hathaway, Brownsburg Clerk-Treasurer, to the Department, August 13, 2020, 11:48 a.m.
 - Proponents' Exhibit 3 – E-mails from Marline Breece to the Department, August 14, 2020, 12:48 & 12:52 p.m.
 - Proponents' Exhibit 4 – Document entitled “Comments of Brownsburg Fire Territory.”
 - Proponents' Exhibit 5 – Powerpoint presentation entitled “Re-establishment of the Brownsburg Fire Territory Equipment Replacement Fund Tax Rate,” dated July 31, 2020.
 - Proponents' Exhibit 6 – Brownsburg Fire Territory Equipment Replacement Fund 5-Year Plan.
 - Proponents' Exhibit 7 – Brownsburg Fire Territory Equipment Replacement Fund 5-Year Plan, draft version.
 - Proponents' Exhibit 8 – Formal Complaint of Nathan Mantlo to the Public Access Counselor, dated April 9, 2020. Text of public notice and transcript of the March 12, 2020 hearing included as attachments.
 - Proponents' Exhibit 9 – Letter from Luke Britt, Public Access Counselor, to Nathan Mantlo re: Formal Complaint, dated June 25, 2020.
 - Proponents' Exhibit 10 – Letter of Emory T. Lencke, Lincoln Township Chair, to Kaitlyn Holmecki, Public Access Coordinator, dated July 29, 2020.
 - Proponents' Exhibit 11 – Letter of Tom Kmetz to Kaitlyn Holmecki, Public Access Coordinator, dated July 29, 2020.

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

- (1) The Hearing Procedures Script for the July 31 hearing.
- (2) The Hearing Record of Evidence for the July 31 hearing.
- (3) A digital video recording of the July 31 hearing.
- (4) Brown Township Resolution.
- (5) Lincoln Township Resolution.
- (6) Town of Brownsburg Ordinance
- (7) Objectors' Petition, filed April 14, 2020.
- (8) Interlocal Agreement of the Territory (“Interlocal Agreement”).

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. The objection petition makes the following assertions:

- (1) The tax increase will result in financial hardship incurred by the majority of individuals affected by the COVID-19 emergency.

- (2) The Fund levy for 2020 exceed its budget by 28%, and will add ~\$250K to the Territory's already adequate cash reserves of \$1.076 million after circuit breaker and excise tax.
- (3) The Territory administration and the Territory fire chief did not request a tax rate and levy increase for the Fund, and the Territory executive board ("Executive Board") was not informed of spending plans that justify a spending increase.
- (4) There are sufficient cash reserves to replace major equipment, and there has been no proposal or approved plans to purchase additional major equipment with our current or projected cash reserves.
- (5) There were two violations that took place at the March 12 public hearing that renders the vote invalid. First, Brown and Lincoln Township Boards "closed their public meeting" after the public hearing and did not re-open their meetings prior to voting to adopt their resolution, in violation of IC 5-14-1.5. Second, the Brown Township Trustee was not present at the adoption meeting as required by IC 36-6-4-3(4).

Objection Petition.

24. Thirty-one taxpayers signed the petition which specifies why the tax is unfair and unneeded, and why the public meeting where the vote occurred should be rendered invalid. *Objectors' Exhibit G.* A tax increase of a few dollars per year for a taxpayer will still create a disproportionate hardship especially on the residents of the unincorporated parts of the Territory. If the representatives from the Territory do not think the tax increase is significant they should be willing to pay this amount all by themselves. *Objectors' Exhibits C, G & O.*

25. The Territory maintains a higher Fund tax rate compared to most other fire territories in the state. *Objectors' Exhibit P & Q.* The Territory also makes unneeded costs at the expense of the taxpayers, including donating large dollar equipment items to other fire Departments, providing mutual aid to surrounding areas, and allotting Fund money to personal use vehicles that are nicer than what the average resident drives. The fire station was not mentioned as part of a long term plan, and costs to pay for the fire station or any other of the Territory's buildings will be paid out of debt service, not out of the Fund. *Objectors' Exhibits F & O.*

26. The increase to the rate, if continued into 2022, would yield a levy increase of 25.39% compared to what the levy was in 2016. *Testimony of Jim Murphy.* In 2016, the Fund rate of \$0.0333 generated a levy of \$638,666. In 2020, the Fund levy at the same rate is \$745,885. By 2022, this levy is estimated to be \$800,842, which is an increase of \$162,176 from the 2016 levy. *Objectors' Exhibit A.* The money that the Territory is receiving for the Fund should be controlled by the Department. *Testimony of Jim Murphy.* Additional funding should be vetted during the yearly budget process and not on a "spur of the moment" like what happened during the March 12 hearing. No one offered any revised information for the equipment replacement budget for 2020. The economic burden caused by the COVID-19 pandemic will have effects on this Fund which are unknown at this time, which is a reason not to impose a tax increase. In addition, there will be an additional 15% distribution of taxes due to the property taxes being extended

to July 10. The Territory has been collecting more funds than its projected budget for the Fund at an added cost to the taxpayer. *Objectors' Exhibit E.*

27. Neither the fire chief nor the Executive Board recommended an increase to the Fund rate. The Executive Board was also not approached about either additional items to purchase in 2021 or a need for additional money, including for fire salaries or building or equipment maintenance. *Testimony of Nathan Mantlo; Testimony of Dottie McIntyre.* There were already sufficient cash reserves in the Fund. *Testimony of Sabrina Graham; Testimony of Kurt Disser.* The legislative intent for the Fund is for a plan or an immediate or temporary need, and increasing the tax rate here goes against that intent. *Testimony of Kurt Disser.*

28. With respect to the alleged violations that took place at the March 12 hearing, the minutes of the hearing showed the meeting was “closed” before the votes on the proposed re-establishment took place. *Testimony of Nathan Mantlo; Testimony of Dottie McIntyre; Minutes of the March 12, 2020 public hearing; Proponents' Exhibit 8.* The PAC issued an advisory opinion that determined closing the meeting was simply a “semantic error” and the actions by the Lincoln and Brown Township Boards were not in non-compliance with the law. *Proponents' Exhibit 9.* The Objectors claim the PAC opinion is wrong, noting that the Brown Township Board Secretary, Dottie McIntyre, was confused by the announcement. *Testimony of Nathan Mantlo; Objectors' Exhibit G.*

29. The Brown Township Trustee, Nathan Mantlo, did not attend the public hearing on account of the COVID-19 public health emergency making it too dangerous to attend a public meeting. He informed the Brown Township Boardmembers by e-mail about this and encouraged the Board not to attend, and the Brown Township Board Chair, Tom Kmetz, replied that the Trustee’s presence was not needed and decided to hold the vote, anyway. However, IC 36-6-4-3(4) requires a township trustee to attend all meetings of the township board, meaning the Brown Township Trustee’s failure to attend the public hearing made the Township Board’s vote invalid. An advisory PAC opinion mandates the trustee to be present at all township board meetings, but also personal communications with the Public Access Counselor wherein the Counselor said the township board cannot meet or take any action without the trustee present. *Testimony of Nathan Mantlo; Testimony of Dottie McIntyre; Objectors' Exhibits G, I, and R.*

B. Summary of Proponents' Contentions

30. The population within the Territory had grown by 3% over the last 5 years. *Testimony of Larry Alcorn.* Since the 2010 Census, the Town of Brownsburg itself had grown by 22.6%, and the 46112 zip code (roughly the service area of the Territory) was 37,047. *Proponents' Exhibit 4.* There is a plan to build a fourth firehouse closer to I-465 in the next two to three years, as well as renovate the current firehouse in order to comply with NFPA guidelines. *Testimony of Larry Alcorn; Proponents' Exhibits 2 & 4.*

31. The Territory does not transfer operating fund revenue to the Fund because the operating fund balances are always too slim. The Territory has had a capital project plan

since at least 2017 which is updated in light of budget needs. *Testimony of Larry Alcorn.* The operating balance for the Fund is expected to be somewhere between \$560,000 and \$579,029 by the end of 2020. The starting balance in 2020 was \$1,076,450.08, with \$229,333.86 encumbered on that date. The Territory's \$11.4 million overall budget relies on property and local income taxes. Personnel costs constitute 84% of the operating fund expenses, and COVID-19 has put more pressure on the operating budget, making transfers to the Fund less feasible. *Testimony of Paige Sansone; Proponents' Exhibit 4.* The Territory's current equipment is assessed at about \$5,800,000, but which is aging and needs to be replaced. The Territory has had to do this in recent years, including replacing all 3 of its pumper trucks which were found to be defective. *Proponents' Exhibit 2.*

32. The amount of the tax increase is negligible. The increase to the Fund rate will be \$0.0004 per \$100. Assuming the 2020 certified net assessed value for the Territory, this will add only \$10,500 in taxes to the Fund. For a \$150,000 residential homestead, this will increase taxes by about \$0.27 a year; for a \$150,000 commercial property, taxes will increase by \$0.60 a year; agricultural and other residential properties will not see any increase in taxes due to the re-establishment. Approximately 14% of the tax increase is expected to be offset by circuit breaker credits. Finally, the Territory's overall tax rate since 2013 has dropped from \$0.3408 to \$0.3040; hence, taxpayers will likely not see a tax increase. *Testimony of Paige Sansone; Proponents' Exhibits 1, 4, & 5.*

33. The Executive Board was advised at its January 2020 meeting to adopt a resolution recommending re-establishing the Fund. The Executive Board did so at its February meeting. Section 2.12(a) of the Interlocal Agreement provides that the Executive Board "shall have as its primary responsibility the planning and provision of adequate fire protection, fire prevention and emergency response throughout the Territory." Hence, the Board has not approved a plan outside of the budgeting process. However, Chief Alcorn developed a five-year plan in 2017 to cover years 2018-2022 and is regularly maintained. Chief Alcorn also communicates the need for capital expenditures during the budgeting process. This would happen during budget season before the deadline for cumulative fund proposals was moved to May 1. *Proponents' Exhibits 4, 5, & 6; Testimony of Larry Alcorn; Interlocal Agreement.*

34. The chairs of the Brown and Lincoln Township Boards both responded to Mr. Mantlo's complaint to the PAC that the error to "close the public meeting" was inadvertent. *Proponents' Exhibits 10 & 11.* The PAC found that the Open Door Law does not regulate the conduct of meetings other than the keeping of minutes as the meeting progresses, therefore the alleged error at the March 12 meeting is not one covered by the Open Door Law. *Proponents' Exhibit 4.*

35. The absence of the Brown Township Trustee was not dispositive of the Brown Township Board's action to re-establish the Fund. The proper analysis of Indiana Code 36-6-4-3(4) is whether the duty of the trustee was fulfilled, not whether his absence invalidated a publically noticed meeting of the board. The statute also does not state that the township board's meeting cannot be held without the trustee's attendance. *Proponents' Exhibit 4.*

ANALYSIS

36. In general, the Department does not inject itself into local affairs and therefore is hesitant to not second guess a policy decision of local elected officials, especially one in which those officials have sought professional third party consultation, and which has been properly adopted according to Indiana law.

37. The objections raised fall into four issues: 1) financial hardship on taxpayers; 2) any planned spending can be met by existing cash reserves; 3) neither the Executive Board nor the fire Department chief recommended an increase; 4) procedural defects that occurred at the March 12 hearing invalidated the re-establishment. The Department takes each issue in turn, adding relevant facts based on the evidence as needed.

Financial Hardship

38. The claim here is that the response of state and local governments to address the COVID-19 pandemic has led to as yet unascertainable economic impacts, including unemployment among some of the residents of the Territory, and the tax increase would burden some taxpayers even more. The Territory responded that the per taxpayer impact is low, barely a dollar in most cases, and that some taxpayers may not even see a tax increase due to the property tax caps absorbing the increased levy.³

39. The Department acknowledges that with the COVID-19 pandemic, some taxpayers in the Territory may have lost salaries, wages, and even their jobs, making paying for an increased tax difficult. However, the Objectors do not corroborate this claim regarding affected taxpayers' ability to pay for the increase.

40. Ultimately, the question of what constitutes a financial hardship is a subjective one, with no clear statutory guidelines about what produces a hardship and what does not. The Department therefore will not decide whether the proposed tax increase creates a financial hardship. The Department will acknowledge that the Territory has provided an estimate that, at most, taxpayers will see their property taxes go up by less than \$1. The Objectors have not provided contrary evidence, but simply argued that taxpayers economically affected by the public health emergency will face an additional burden.⁴ The Objectors have not asked that the Fund rate be reduced or abolished entirely. The Department will not consider this objection further.

³ At the hearing, it was stated that none of the fiscal impact analysis presented by Paige Sansone was made available to the public at the March 12 hearing. *Testimony of Paige Sansone*. The Department wonders if it should have been, especially considering the Territory paid for the fiscal analysis with taxpayer money, anyway.

⁴ Some of the Objectors argued that small tax increases create a hardship when they are collected by multiple taxing units. *Objectors' Exhibits F & O*. The participating units of the Territory do not have control over other taxing units that overlay the Territory. This argument also does not explain why the Territory should have to keep its taxes lower as opposed to these other taxing units.

Adequate Cash Reserves Do Not Warrant Levy Increase

41. Objectors point to existing cash reserves as being ‘adequate,’ therefore a tax increase is not necessary. The Territory responds that the fire Department’s current equipment is aging and must be replaced, and that the current cash reserve alone will be nearly halved by years’ end.

42. As the name suggests, a cumulative fund is designed to allow a consistent & long-term accumulation of money for capital improvements. It is, in essence, a way for a taxing unit to save up money for a particular purpose. The money accumulated is a function of the property tax rate for the cumulative fund and the certified net assessed value of the unit’s tax base for the fund. For certain cumulative funds, however, as a unit’s certified net assessed value grows year after year, the property tax rate for the cumulative fund is adjusted downward to ensure the same amount of money can be accumulated.⁵ A cumulative fund may be “re-established” so that the property tax rate can be re-set to a higher rate than otherwise allowed.⁶ Units with cumulative funds that are trended downward will often re-set this rate in order to maximize the amount of tax revenue contributed to the cumulative fund.

43. The Equipment Replacement Fund statute allows the participating units to agree to (1) impose a property tax to accumulate money in the fund to purchase fire protection equipment; (2) incur debt to purchase fire protection equipment and impose a property tax to pay the loan; and (3) transfer up to 5% of the territory operating fund levy revenue to the fund per year.⁷ The Fund follows the pattern of other cumulative funds, and likewise can also be re-established so the rate can be re-set to the maximum allowed rate.⁸

44. As stated above, the argument that cash reserves in the Fund are sufficient applies just as well or even better with objecting to a tax levy for the Fund at all. Also as stated above, the Objectors have not claimed there should not be a tax levy for the Fund, only that the tax rate should remain at \$0.0329 instead of the proposed \$0.0333. Absent statutory guidance, the issue of what is ‘adequate’ tax revenue is often a matter of subjective opinion. Any statement of the Department about what is ‘adequate’ is no less subjective. For that reason, the Department declines to decide against the Territory that its current cash balance, or the estimated cash balance at the end of 2020, is sufficient.

45. The Objectors also claim there is no adopted or proposed plan to purchase equipment necessitating a tax increase. Chief Alcorn’s 5-year plan for 2020-2024 projects \$4,155,000 in expenses with the following annual projected incomes:

2020	\$776,441
2021	\$803,255

⁵ IC 6-1.1-18-12. The equipment replacement fund is one such fund that has a trended rate. *Id.* at 12(a)(38).

⁶ IC 6-1.1-41-13(b).

⁷ IC 36-8-19-8.5(b).

⁸ IC 36-8-19-8.5(g).

2022	\$831,875
2023	\$856,831
2024	\$882,536

The Fund balance is projected to be -\$4,062, all things being equal. The expenses vary from fire and EMS equipment, fire and EMS vehicles, renovating the existing firehouse and furnishing the new firehouse, all expecting to total \$4,155,000. *Proponents' Exhibit 6*. Admittedly, this being only a draft, the Department does not presume that this represents the actual needs and Fund revenues. What this does show is that the Territory has a list of needed or desired expenses, even if they are unscheduled ones.

46. The Equipment Replacement Fund statute requires that the participating units make an agreement to establish the Fund and describe how money in the Fund is to be used.⁹ The Interlocal Agreement states concerning the Fund that the provider unit shall establish and maintain the Fund “for the purchase of fire protection and emergency response equipment . . . which will be used to serve the Territory.”¹⁰ The Interlocal Agreement also states that a proposed expenditure must first be recommended by the Executive Board and then approved by the Provider Unit and, if necessary, the Department, before the expenditure is appropriated.¹¹ Whether there is a proposed or approved expense from the Fund or not, neither IC 36-8-19-8.5 nor the Interlocal Agreement require an existing expense, or plan for expenses, before the participating units can impose a property tax levy for the Fund or increase an existing levy.¹²

47. For the above reasons, the Department declines to consider this objection. A related point raised by the Objectors has to do with unnecessary costs and disposing of assets by the Territory. That is an issue concerning management of the fire Department serving the Territory, not an issue of the taxes concerning the Fund.

Neither Executive Board nor Fire Chief Requested an Increase

48. The Objectors argued that neither the Executive Board nor Chief Alcorn requested an increase. The Territory countered that the Executive Board approved recommending re-

⁹ IC 36-8-19-8.5(e).

¹⁰ Interlocal Agreement, Section 1.4(b).

¹¹ Interlocal Agreement, Section 7.4.

¹² One Objector argued that the annual budget process and not the March 12 hearing was the right time to address additional funding for the Fund. *Objectors' Exhibit E*. The March 12 hearing was limited to the re-establishment of the Fund, which state law requires be done prior to May 1 of the year before the year a levy for the cumulative fund is imposed. IC 6-1.1-41-4(2). Although Executive Order #20-12 extended the deadline to re-establish a cumulative fund to June 30, taking action on March 12 was not unreasonable. This also does not prevent the Brownsburg Town Council from adopting a lower tax rate for the Fund during budget adoption for the Territory. This Objector also claimed that due to the property tax deadline being extended to July 10 this year, there will be an additional spring distribution of taxes. It is unclear what the Objector means or how he knows this to be the case, but an additional distribution does not necessarily mean the Territory will be receiving extra money. To account for shortages in cash flows, units may request advances of up to 95% of the amount to be distributed at the next semiannual period under IC 6-1.1-27-1. This advance is then deducted from the amount to be distributed at the next semiannual period. IC 5-13-6-3(b), (c).

establishment at its February 2020 meeting, and that while Chief Alcorn did not request an increase, he believed the Territory could use the money.

49. Neither the Objectors nor the Territory offered evidence of the February 2020 Executive Board meeting other than assertions. The Department cannot find that the Executive Board considered re-establishment or that the Executive Board did not. However, the Department will find that neither the Interlocal Agreement nor state law requires a recommendation before the participating units had re-established the Fund at the March 12 hearing.

50. As previously stated, units with authority to establish cumulative funds will often re-set the property tax rate to ensure the unit accumulates the most amount of money possible. The participating units of the Territory appeared to have done so, here. Indiana Code 36-8-19-8.5(a) states that the participating units may agree to establish an equipment replacement fund by each legislative body adopting a resolution or ordinance. It does not require any prior recommendation or action taken by another body, such as a Executive Board or the fire Department chief.¹³ The Department cannot find how the adoption at the March 12 hearing was not in line with statute or otherwise illegal with respect to this issue.

51. Indiana Code 36-8-19 does not require an executive board be formed to govern a fire protection territory. The Executive Board was established by the same Interlocal Agreement forming the Territory. *Proponents' Exhibit 4*. Several provisions in the Interlocal Agreement state that the Executive Board approves expenditures, including those recommended by the participating units¹⁴, but there is no provision that the Executive Board approves or recommends the tax levies. Indiana law states that “the participating units may agree to impose a property tax rate for the accumulation of money in the Fund.”¹⁵ While the participating units may provide in an interlocal agreement that the Executive Board may recommend tax increases for the Fund, the participating units have not done so here. Lack of recommendations from the fire chief or the Executive Board notwithstanding, the decision to impose a property tax rate remains with the participating units.

Alleged Violations Occurring at March 12 Hearing

52. The Department defers to the opinion of the PAC that the statement found in the March 12 public hearing minutes was simply a matter of semantics. The PAC is the regulatory body charged with issuing advisory opinions and interpreting public access laws, including the Open Door Law.¹⁶ How the legislative bodies conducted the March 12 hearing is therefore within the purview of the PAC, not the Department. Moreover,

¹³ Chief Alcorn stated at the March 12 hearing that while he did not request an increase, he supported the increase and stated that his request was unnecessary. *Proponents' Exhibit 8*.

¹⁴ Territory Interlocal Agreement, Sections 2.12(e) through (h), 6.3, 7.1 through 7.8.

¹⁵ IC 36-8-19-8.5(b).

¹⁶ IC 5-14-4-10(6).

Indiana law provides for legal remedies for alleged violations of the Open Door Law.¹⁷ The Objectors have not shown that they have filed an action with a court of competent jurisdiction, and in any event the presence of such remedies makes this claim all the more outside the Department's authority.

53. The claim about Mr. Mantlo's absence at the March 12 meeting is more complicated. The Objectors claim that because he did not attend the meeting, the Brown Township Board ("Board") could not vote on the proposed Fund, which would invalidate the re-establishment as IC 36-8-19-8.5(c) requires identical resolutions and ordinances be adopted by all participating units. The Territory responds that his absence was inconsequential to the Board's vote.

54. It is not disputed that Mr. Mantlo was the Brown Township Trustee at the time of the March 12 public hearing. It is also not disputed that there was a public health emergency brought on by COVID-19, and the concern about putting one's health at risk by appearing at a public meeting is understandable. Citing this reason, Mr. Mantlo sent an e-mail to the Boardmembers hours before the hearing that he was not going to attend and discouraged the Board from doing so, as well. Tom Kmetz, Chairman of the Board, responded that he was going to attend. *Objectors' Exhibit H*. There is an apparent ambiguity about Mr. Mantlo's decision to not attend. The Objectors claim he was cancelling the meeting, but also that his failure to attend constituted a procedural error that negates the Board's action. The Territory claims that Mr. Mantlo's presence at the meeting was unnecessary and denies that his absence was dispositive of the Board's vote on the Fund.

55. The Department cannot accept the claim that Mr. Mantlo's e-mail effectively cancelled the Board meeting on March 12. The e-mail simply indicates that Mr. Mantlo said he was not going to attend, not that the meeting was going to be cancelled. The copy of the e-mail provided to the Department showed the word 'cancellation' written in by hand over the e-mail. The text of the e-mail itself does not use the word 'cancel' or any of its variants with respect to the status of the meeting. *Objectors' Exhibit H*. At best, the handwriting indicates that the Objectors took the e-mail to be a cancellation notice after the fact, regardless of whether Mr. Mantlo intended it to be such at the time he sent it.

56. The Objectors point to a formal opinion by the PAC which they claim supports their contention that the Board's vote was illegal because Mr. Mantlo was not there. *Objectors' Exhibit R*. While the Department reiterates that it will defer to the opinions of the PAC, the opinion the Objectors proffered is distinguishable in several important ways. First, as explained in that opinion, the complainant trustee alleged he was told not to attend an executive session of the township board. Here, Mr. Mantlo, instead of being told that he was not to attend the meeting, voluntarily told the Boardmembers that he was not going to be there. In addition, the Board was convening a joint public hearing with the other legislative bodies of the Territory, not an executive session. Finally, this opinion states that under IC 36-6-4-3(4) the township board must allow the trustee to attend the meeting. It does not say that only when the trustee is attending can the township board

¹⁷ IC 5-14-1.5-7.

hold the meeting. The Objectors have not provided a PAC opinion which interprets IC 36-6-4-3(4) as it pertains to a trustee being voluntarily absent from a board meeting, and the Department cannot identify one, either.

57. The Department is inclined to agree with the Territory that IC 36-6-4-3(4) does not invalidate the Board's vote at the March 12 meeting. Indiana Code 36-6-4-3 does not state that a township board's action taken at a meeting is invalid if the trustee did not attend the meeting, and the Objectors could not point to any other statute that addresses it. In fact, state law imposes a penalty on a trustee who fails to attend a board meeting.¹⁸ The legislature has intended the consequences for the trustee's failure to attend a township board hearing to fall onto the trustee, not the board.¹⁹

58. Moreover, the purpose of the March 12 meeting was for the Board and the legislative bodies of the other participating unit to hold a public hearing and vote on a matter concerning the Territory. Brown Township not being the provider unit at the time, it is unclear what information Mr. Mantlo needed to be made aware of at the meeting since he would not be the one administering the additional receipt and disbursement of the tax revenue put into the Fund. That function belongs to the Clerk-Treasurer of the Town, the Town being the provider unit. Mr. Mantlo's presence at the March 12 meeting would have been a mere formality, and his absence has no bearing on the Board's vote on the Fund. Therefore, the Department finds the Board's adopting resolution to be valid.

59. Finally, the Department finds that the participating units of the Territory complied with the statutory requirements of IC 6-1.1-41 and IC 36-8-19-8.5(f) in re-establishing the Fund.

CONCLUSION

60. In sum, the Objectors have not pointed to any purpose not permitted by statute that the County intends to use for the Fund. In addition, the alleged deviations on the part of the participating units in conducting the public hearing were either slight or inconsequential and does not negate the re-establishment of the Fund by the participating units. These objections notwithstanding, the adoption of the Fund was properly and lawfully done.

61. Consequently, the Department hereby **APPROVES** the Territory's proposed Fund re-establishment. The Department approves the levying of a tax in the amount of three and thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100.00) of assessed valuation for 2020 and thereafter until the rate is reduced or rescinded, subject to

¹⁸ See Indiana Code 36-6-4-17(a).

¹⁹ The Territory argues that the interpretation of IC 36-6-4-3(4) proposed by the Objectors would turn the statute into a political tool for trustees who oppose township board decisions and want to stop them from taking action. *Proponents' Exhibit 1*. The Department agrees that this purported outcome is certainly a logical extension of the Objectors' interpretation. Nevertheless, the legislature has the prerogative to incorporate the Objectors' interpretation into the wording of IC 36-6-4-3.

existing maximum levy limits under IC 6-1.1-18.5-3. Any levy previously established for this purpose is hereby rescinded.

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

Dated this 24th day of September, 2020.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner