

**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 )     **OBJ21-001**  
BROWNSBURG FIRE PROTECTION TERRITORY )**

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**FINAL DETERMINATION**

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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 Ind. Code § 36-8-19-8.5 and Ind. Code § 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 Ind. Code § 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 Ind. Code § 36-8-19-8.5 and Ind. Code § 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 Ind. Code § 36-8-19-8.5, to establish or re-establish 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 Ind. Code § 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 re-establish 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.<sup>1</sup> Notice of the proposal and of the public hearing must be given by publication in accordance with Ind. Code 5-3-1.<sup>2</sup> If such a proposal is adopted, notice of adoption must be published in accordance with Ind. Code § 5-3-1-2(i) in a manner prescribed by the Department.

10. Pursuant to Ind. Code § 6-1.1-41-6 and not later than noon thirty (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. Upon the filing of the petition, the county auditor must immediately certify the petition to the Department.<sup>3</sup>

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.<sup>4, 5</sup>

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<sup>1</sup> See Paragraph 14.

<sup>2</sup> See Paragraph 13.

<sup>3</sup> See Paragraph 16.

<sup>4</sup> Ind. Code §§ 6-1.1-41-7, 8.

<sup>5</sup> See Paragraph 17-18.

12. After the hearing, the Department must certify approval, disapproval, or modification of the proposal to the county auditor.<sup>6</sup>

13. The Territory<sup>7</sup> published notice of the public hearing on its proposed Fund re-establishment on February 25 and March 4, 2021, in the *Hendricks County Republican* and in the *Indianapolis Star*. *Hendricks County Republican Publisher's Claim; Indianapolis Star Publisher's Claim; Ind. Code § 6-1.1-41-3.*

14. On March 11, 2021, the Territory's participating units (Brown and Lincoln Townships, and the Town of Brownsburg) conducted a public hearing and then adopted a joint resolution 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 #2021-09; Brown Township Resolution #2021-10; Lincoln Township Resolution #2021-07; Ind. Code § 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 25, 2021. *Hendricks County Republican Publisher's Claim; Indianapolis Star Publisher's Claim; Ind. Code § 6-1.1-41-3.*

16. On April 21, 2021, 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 22, 2021. *Petition Objecting to Tax Rate Increase; E-mail from Nancy Marsh, Hendricks County Auditor, to the Department, April 22, 2021, at 11:04 a.m. (on file with Department); Ind. Code § 6-1.1-41-6.*

17. The Department scheduled a hearing on the petition for 10:00 a.m. EDT on July 28, 2021, and provided notice of the hearing to the Territory attorney and the first ten taxpayers whose names appeared on the petition. *Notice of July 28 Hearing to Territory attorney; Notice of July 28 Hearing to Taxpayer.* Ind. Code § 6-1.1-41-8. The public hearing was conducted via teleconference pursuant to Ind. Code § 6-1.1-41-7.

18. The Department conducted the hearing at 10:00 a.m. EDT on July 28, 2021. Department staff member David Marusarz conducted the hearing. *Hearing Officer's Report.*

19. The following testified at the hearing as opponents:

Nathan Mantlo, Brown Township Trustee  
Sabrina Graham

Kurt Disser provided a written statement after the hearing, which will also be referenced in this Order.

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<sup>6</sup> Ind. Code § 6-1.1-41-9.

<sup>7</sup> Throughout this Order, an action of the participating units on behalf of the Territory will be referred to as if it was an action of the Territory, itself.

20. The following testified at the hearing on behalf of the Territory:

Larry Alcorn, Chief of the Brownsburg Fire Department  
Paige Sansone, financial advisor  
J. Christopher Janak, Attorney for Territory

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

- Objectors' Exhibit A – Statement of Kurt Disser, received August 4, 2021.
- Objectors' Exhibit B – Letter from Luke Britt, Public Access Counselor (“PAC”), regarding complaint 21-FC-41 filed by Kurt Disser and Nathan Mantlo, dated June 21, 2021.
- Objectors' Exhibit C – Letter from Angela Delp, Brown Township Board, to PAC regarding 21-FC-41.
- Objectors' Exhibit D – E-mail from Angela Delp, dated March 5, 2021.
- Objectors' Exhibit E – Publisher's claim from the *Indianapolis Star* for the notice of public hearing, dated March 4, 2021.
- Objectors' Exhibit F – Publisher's claim from the *Hendricks County Republican* for the notice of public hearing, dated March 4, 2021.
- Objectors' Exhibit G – E-mail from J. Christopher Janak to Nathan Mantlo, dated February 24, 2021, with attachments.
- Objectors' Exhibit H – Written statement of Nathan Mantlo, received August 4, 2021.

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

- Proponents' Exhibit 1 – Baker Tilly Presentation on the Re-establishment of the Fund Tax Rate, dated July 28, 2021.
- Proponents' Exhibit 2 – Written comments by J. Christopher Janak on behalf of the Territory, dated August 4, 2021.
- Proponents' Exhibit 3 – Baker Tilly Presentation on the Re-establishment of the Fund Tax Rate, dated March 11, 2021.
- Proponents' Exhibit 4 – Submission to the Department on the re-establishment of the Fund, received March 31, 2021.
- Proponents' Exhibit 5 – Notice of 21-FC-41 from the PAC, dated April 8, 2021.
- Proponents' Exhibit 6 – Letter from Angela Delp, Brown Township Board, to PAC regarding 21-FC-41.
- Proponents' Exhibit 7 – E-mail from Angela Delp, dated March 5, 2021.
- Proponents' Exhibit 8 – Publisher's claim from the *Indianapolis Star* for the notice of public hearing, dated March 4, 2021.
- Proponents' Exhibit 9 – Publisher's claim from the *Hendricks County Republican* for the notice of public hearing, dated March 4, 2021.
- Proponents' Exhibit 10 – E-mail from J. Christopher Janak to Nathan Mantlo, dated February 24, 2021, with attachments.
- Proponents' Exhibit 11 – Letter from Luke Britt, Public Access Counselor (“PAC”), regarding complaint 21-FC-41 filed by Kurt Disser and Nathan Mantlo, dated June 21, 2021.

- Proponents' Exhibit 12 – Five-year plan for the Fund.
- Proponents' Exhibit 13 – Minutes of the July 8, 2021, meeting of the Brownsburg Town Council.
- Proponents' Exhibit 14 – Minutes of the October 19, 2020, meeting of the Territory Executive Board.
- Proponents' Exhibit 15 – E-mail from J. Christopher Janak to Nathan Mantlo, dated February 24, 2021 at 2:06 p.m., with attachments.

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

- (1) The Hearing Procedures Script for the July 28 hearing.
- (2) The Hearing Record of Evidence for the July 28 hearing.
- (3) A digital video recording of the July 28 hearing.
- (4) Brown Township Resolution.
- (5) Lincoln Township Resolution.
- (6) Town of Brownsburg Ordinance
- (7) Objectors' Petition, filed April 21, 2021.
- (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**

24. The objection petition made the following assertions:

- (1) The Territory has adequate cash reserves to replace firefighting equipment and personal protection equipment, and major expenditures have occurred from the fund that should not be paid for from the fire equipment replacement fund. Examples of such expenditures include bathroom and bedroom remodeling in two of the three fire stations and installation of a traffic light.
- (2) Due to the financial hardship being experienced because of the current economic conditions in the context of increased assessed property values, this unnecessary maximum tax rate and levy should be denied. Only select and few business properties have had their AV decreased by Hendricks County.
- (3) During the meeting to re-establish the maximum tax rate, the fire chief, who is the person in charge of assessing needs for the Territory, did not communicate a need, or request a tax rate and levy increase for the fund, nor communicate specific spending plans to the Territory Executive Board to justify a levy increase. The only presentation was misleading and was by a consultant hired by the fire chief who discussed the entire "combined rate" as favorable, to disguise the focus of the meeting: the impact of the equipment replacement fund and levy.
- (4) Violations of the Indiana Public Access Law occurred before and at the March 11, 2021, adoption meeting that must render the adoption invalid:
  - a) The Brown Township Board did not

- 1) property notice the meeting;
  - 2) properly call the meeting, and
  - 3) notify the Brown Township Trustee that they were meeting to adopt the resolution.
- b) The Brown Township Trustee was not notified by the board and was not present at the adoption meeting as required by Ind. Code § 36-6-4-3(4).

### *Objection Petition.*

25. Mr. Mantlo argued that the Territory has re-established this Fund for the projected tax revenue but without any real plans to spend. He also claimed the fire department has used the Fund for purposes contrary to statute, including for the purchase of exercise equipment, bedroom & bathroom remodeling, and the purchase of an emergency traffic signal. Mr. Mantlo also claimed the Department has the authority to require a spending plan be put before the legislative bodies. He also argued that the total rate is not being objected to, and the petition is only an objection to the Fund rate increase. *Testimony of Nathan Mantlo.*

26. Mr. Disser argued in a written statement that Mr. Alcorn did not request a tax increase. He claimed he was denied the opportunity to speak at the March 11 hearing and has been denied access to public records from the Town of Brownsburg, the Territory's provider unit. Mr. Disser stated the legislative intent for the Fund is for a planned need or an immediate or temporary need because the rate is supposed to be phased out over time. Finally, Mr. Disser contended that the increased tax will harm Brown Township citizens who are not at the property tax caps, but the township board is complicit with the Town of Brownsburg controlling how the Territory is funded. *Objectors' Exhibit A.*

27. Mr. Disser and Mr. Mantlo both alleged that there were violations of public access laws and public hearing laws. They claimed that the March 11 hearing of the Brown Township Board was not properly called in compliance with Indiana law. *Objectors' Exhibit A; Testimony of Nathan Mantlo.*

28. Mr. Disser and Ms. Graham argued the Department has authority to reduce the proposed levy. *Objectors' Exhibit A; Testimony of Sabrina Graham.* They also alleged that the fire department has been giving equipment away to other fire departments. *Objectors' Exhibit A; Testimony of Sabrina Graham.*

## **B. Summary of Proponents' Contentions**

29. Ms. Sansone stated that re-establishing the Fund keeps tax revenue constant with expenses and maintains adequate reserves. She stated since 2017 the growing net assessed values have decreased the tax rate for the Fund. She argued that in same period the overall rate for the Territory has decreased, therefore the overall tax liability will also decrease. *Testimony of Paige Sansone.*

30. Mr. Alcorn & Mr. Janak argued that the purchases from the Fund all constitute firefighting equipment and therefore were consistent with Ind. Code § 36-8-19-8.5. *Testimony of Larry Alcorn; Testimony of J. Christopher Janak.* They stated that the Executive Board approved a five-year financial plan in 2020. The Proponents also stated that the participating units plan to use money from the Fund to construct and equip additional fire stations in the coming years. *Proponents' Exhibit 2.* Mr. Alcorn also claimed that the fire department disposed of old equipment in compliance with applicable laws. *Testimony of Larry Alcorn.*

31. The Proponents claimed that the Department's prior decision rejecting a remonstrance against the Fund in 2020 requires a similar result against two of the issues raised in the petition. They then stated the other two issues are matters for either the State Board of Accounts ("SBOA") or the PAC. *Testimony of J. Christopher Janak; Proponents' Exhibit 2.*

32. Finally, the Proponents claimed the participating units for the Territory complied with all the legal requirements for re-establishing the Fund. *Proponents' Exhibit 2.*

33. Other contentions and statements from both Objectors and Proponents will be included in the Analysis as necessary.

## ANALYSIS

34. In general, the Department does not inject itself into local affairs and does not second guess a policy decision of local elected officials, especially when those officials have sought professional third-party consultation and have taken proper action according to Indiana law.

35. There are five objections raised: 1) adequate cash reserves; 2) financial hardship on taxpayers; 3) unnecessary spending; 4) Chief Alcorn did not recommend an increase; and 5) procedural defects from the March 11 hearing invalidated the re-establishment. The Department takes each issue in turn, adding relevant facts based on the evidence as needed.

36. The claims and assertions raised by the Objectors are similar to a previous petition that was filed with the Department in 2020. Likewise, the response to the petition from the Territory is similar. Given the similarities of the arguments presented, the Department will refer back to its prior decision where appropriate.<sup>8</sup> At the outset, the Department will again not consider the claim about the disposal of fire department assets because it is not an issue of taxes concerning the Fund.<sup>9</sup>

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<sup>8</sup> OBJ 20-002, dated September 24, 2020.

<sup>9</sup> Id. at ¶47.

### *Objection 1 – Adequate Cash Reserves Do Not Warrant Levy Increase*

37. The Objectors claimed that there are adequate cash reserves in the Fund such that a tax increase is unwarranted. The Proponents claimed that whether cash reserves are adequate is a local decision and that the Territory does have a plan for the expenses which has been approved by the Executive Board.

38. The Department agrees with the Proponents that the sufficiency of cash on hand is a local matter. As stated in the 2020 order, “[a]bsent 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.”<sup>10</sup> The Department again declines to consider the adequacy of the cash reserves.

### *Objection 2 – Unnecessary Spending*

39. The Objectors argued that the Fund has been used for purchases that are not consistent with Ind. Code § 36-8-19-8.5(a). The Territory countered that such purchases fit the statute.

40. The Tax Court has previously held that, when reviewing a proposed cumulative fund, the Department may consider whether the purpose of a cumulative fund is proper.<sup>11</sup> Indiana Code § 36-8-19-8.5(a) states that the Fund can be used “to purchase fire protection equipment, including housing.” On the surface, the purchases meet the intended purposes of an equipment replacement fund. The bedroom & bathroom remodeling is obviously a remodeling of “housing” and to suggest otherwise would be contrary to the plain meaning of the term. The exercise equipment is relevant to fire protection by keeping firefighters in a physical condition necessary to perform their duties. The emergency traffic signal, as described by Mr. Alcorn, is used to help the firefighters do their runs more efficiently. The Objectors did not provide any SBOA audit document or cite to a court case which states that such purchases are outside the scope of Ind. Code § 36-8-19-8.5. The Department therefore declines to consider this claim further.

### *Objection 3 – Financial Hardship*

41. The Petition states that current economic conditions have created a financial hardship, citing increased assessed values for most businesses and residents. Mr. Disser stated in his written statement that the Fund re-establishment is “damaging to a disproportionate amount of Brown Township citizens” because property tax liabilities are not near the tax caps and they “pay more than [Lincoln Township and Brownsburg] due to the taxing structure and amount of taxing units that differ in the unincorporated areas versus the incorporated areas.” He also claimed he will have to pay \$500 more in personal property taxes if “the taxing entities continu[e] on their present course to max out all tax rates,”

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<sup>10</sup> See *id.* at ¶44.

<sup>11</sup> *Bd. of Comm’rs of Clark County v. DLGF*, 31 N.E.3d 552, 555 (Tax Ct. 2015).



such as for the Fund, and that Town residents pay 23% less on the Fund because they are at the tax caps. *Objectors Exhibit A*. None of these claims are corroborated with evidence.

42. There are no clear statutory guidelines about what constitutes a financial hardship. Last year the Department did not consider this a claim that can be evaluated by the Department.<sup>12</sup> While Ms. Graham and Mr. Disser have asked the Department to reduce the Fund rate, they have not indicated what the rate should be reduced to or what rate will not result in a financial hardship. The Department declines to second guess duly elected local officials who make the decisions with respect to the Territory.

43. The Objectors make an ancillary claim about taxpayer dissatisfaction. Mr. Disser writes that the Town has “a history of attempting to abuse and threaten Brown and Lincoln township residents [not in Brownsburg] using the Fire Territory and its funds as a weapon.” *Objectors Exhibit A*. Mr. Mantlo argues that the public officials “need to respect the taxpayers” and that “the taxpayers have had enough.” *Testimony of Nathan Mantlo*. If the taxpayers do not agree with the public officials’ policy of re-establishing the Fund annually, the taxpayers may elect different public officials that carry out alternative policies. Additionally, Ind. Code § 36-8-19 has procedures in place for a participating unit to join a territory (Ind. Code § 36-8-19-6) or leave a territory (Ind. Code § 36-8-19-13). If the taxpayers in a unit were truly unhappy with the arrangement of the territory, they could either petition their elected officials to withdraw from the territory or elect new ones to do so.

44. The Department also disagrees with the Objector’s claim that discussing the overall tax impact is irrelevant, including Mr. Mantlo’s argument that it is irrelevant because only the Fund is being objected to. It is prudent to inform the decision-making bodies about a proposal’s expected overall tax impact, even if the prediction ends up being wrong. In the context of a public hearing, focusing only on the Fund, without also considering other taxes and funds, deprives the taxpayers of a more complete picture of the proposal and how it will affect their tax liabilities. Therefore, the Department does not accept that it is irrelevant.

#### *Objection 4 – Fire Chief Did Not Request an Increase*

45. The Objectors argued that Mr. Alcorn had not requested an increase. The Territory countered that the Executive Board approved recommending re-establishment at its February 2020 meeting, but the Executive Board has not since requested an updated plan.

46. The Department has previously stated that under Indiana law, the decision to re-establish an equipment replacement fund rests with the participating units.<sup>13</sup> There is no reason now to think otherwise. In addition, Ind. Code § 36-8-19-8.5 does not require any recommendation or request before the participating units may act.

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<sup>12</sup> OBJ 20-002 at ¶38 – 40.

<sup>13</sup> OBJ 20-002 at ¶48 – 51.

47. The Objectors claimed there is no adopted or proposed plan to purchase equipment necessitating a tax increase.<sup>14</sup> Mr. Alcorn’s 5-year plan for 2021-2025 shows an anticipated \$4,155,000 in expenses with the following annual projected incomes:

2021	\$844,531
2022	\$901,341
2023	\$937,057
2024	\$975,633
2025	\$1,015,618

The Fund balance is projected to be \$482,180. The expenses vary from fire and EMS equipment and vehicles, renovating the existing firehouse, and furnishing the new firehouse, all expected to total \$4,192,000. *Proponents’ Exhibit 12*. The Department does not presume that this draft represents the actual needs and Fund revenues. However, this does show that the Territory has a list of needed or desired expenses, even if they are unscheduled ones. This also shows that Mr. Alcorn anticipates a consistent stream of revenue into the Fund over at least the next few years.

*Objection 5 – Alleged Violations Occurring at March 11th Hearing*

48. The Objectors summarize the procedural errors that took place with respect to the March 11th hearing as follows:

- 1) All three participating units did, in sequence,
  - a. independently open the meeting;
  - b. participate in opening ceremonies;
  - c. independently open the public hearing to re-establish;
  - d. hear from [Mr. Alcorn] and [Ms. Sansone];
  - e. open the floor for public comments, which there were none;
  - f. independently close the public hearing;
  - g. open the agenda item to vote on the separate but identical resolutions and ordinance to re-establish the Fund;
  - h. vote on the resolutions and ordinance; and
  - i. separately close their respective meetings.
- 2) The meeting notice was not posted at the regular meeting place, which was at the Brown Township Office. Rather, the meeting was held five (5) miles from the township offices. Therefore, the posted notice violated the Open Door Law.
- 3) The March 11 hearing of the Brown Township Board was not properly called in compliance with Ind. Code § 36-6-6-13.5 because [Brown Township Board Chair] Angela Delp sent an e-mail on March 5, which was not contemporaneous with the notices published in the newspapers.

*Objectors’ Exhibits A & H*. The Objectors then stated that the PAC determined that no ODL violation took place because the March 11th hearing was not a “meeting” within the

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<sup>14</sup> Mr. Mantlo claimed the Department has authority to require a spending plan, but without citing to any statute that says this. Thus, the Department will decline to do so.

contemplation of the ODL. Mr. Mantlo in particular disagreed with the PAC, arguing that what took place on March 11th was both a meeting and a hearing.

49. The Department defers to the PAC regarding public access issues.<sup>15</sup> The PAC's response to Mr. Disser's and Mr. Mantlo's complaint states that public hearings have distinct notice requirements governed by different statutes from the Open Door Law. *Objectors' Exhibit B*. The public notice requirements regarding cumulative funds are specified in Ind. Code § 6-1.1-41-3, which is referenced with respect to the Fund in Ind. Code § 36-8-19-8.5.<sup>16</sup>

50. Mr. Disser claimed the PAC is quoted to have said that the conduct of the public hearing is within the purview of the Department because it "regulate[s] the tax rate procedures under and entirely different set of statutes [from the Open Door Law]." *Objectors' Exhibit A*. Mr. Disser offered no corroborating evidence, but even if this is indeed what the PAC said, it does not mean that the Department actually regulates the conduct of public hearings, only that the PAC believes the Department regulates tax rate procedures.

51. The Department may ensure legal notices were proper in reviewing a cumulative fund proposal, but it does not have statutory authority to review the conduct of public hearings that are not prescribed by statute. Indiana Code §§ 6-1.1-41-3 and 36-8-19-8.5 do not elaborate on what must take place during such hearings. Therefore, the Department defers to the local officials on conducting a hearing.

52. The Objectors provided no evidence that the participating units failed to conduct a public hearing or offer the opportunity for public comment at a hearing. Mr. Disser claimed he "was denied the ability to be heard and provide pertinent information" to the Brown Township Board. *Objectors Exhibit A*. He did not elaborate how he was denied the opportunity to speak. By contrast, Mr. Mantlo stated that there was an opportunity given for public comment at the March 11th hearing, and that no comments were made. *Objectors' Exhibit H*.

53. The notices published in the newspapers did give the date, time, and place of the hearing, and the Objectors have not alleged the hearing was actually held in some other place. Neither Mr. Disser nor Mr. Mantlo identified any defect in the public notices that prevented members of the public from attending the hearing. Their argument appears to hinge on enforcement of the Open Door Law, which as stated above the Department will defer to the PAC on whether it applies, here. As for the public notices, the Department finds that the Territory has complied with Ind. Code § 6-1.1-41-3.

54. Ms. Delp's March 5th e-mail shows that she sent a link of the March 11th hearing agenda to fellow boardmembers Dottie McIntyre and Tom Kmetz along with the statement "FYI be sure to add to your calendar." *Objectors' Exhibit D*. Ind. Code § 36-6-6-13.5(a) states that "[a] special meeting may be held by the legislative body if the

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<sup>15</sup> Id. at ¶52.

<sup>16</sup> See Paragraph 8-9.

executive, the chair of the legislative body, or a majority of the members of the legislative body issue a written notice of the meeting to each member of the legislative body.” This provision does not reference Ind. Code § 5-3-1 or state that the written notice must be given at the same time as a public notice on the same subject matter.

55. The Department has authority to interpret property tax laws.<sup>17</sup> It is not clear how a violation of Ind. Code § 36-6-6-13.5 necessarily leads to a violation of a property tax law or even Ind. Code § 5-3-1. That statute prescribes notice to the township board, not to members of the public.<sup>18</sup> Had Ms. Delp not sent that March 5th e-mail, the public notices would have still been published and the public would have still been notified in compliance with Ind. Code § 6-1.1-41-3 and by association Ind. Code § 5-3-1. The Department therefore declines to consider this claim further.

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

## CONCLUSION

57. In sum, the Objectors have not pointed to any purpose not permitted by statute that the County intends to use for the Fund. Several of the issues raised were substantially similar to the objections raised last year, and the Department will not depart from its prior order. The Objectors raised other issues that are not within the Department’s purview to resolve. These objections notwithstanding, the adoption of the Fund was properly and lawfully done.

58. 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 2021 and thereafter until the rate is reduced or rescinded, subject to existing maximum levy limits under Ind. Code § 6-1.1-18.5-3. Any levy previously established for this purpose is hereby rescinded.

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

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<sup>17</sup> Ind. Code § 6-1.1-35-1. This includes Ind. Code § 36-8-19-8.5, to the extent it involves property taxes.

<sup>18</sup> Mr. Mantlo also claimed the e-mail was not sent to him. Ind. Code § 36-6-6-13.5(a) does not expressly require that the trustee receive the written notice. Mr. Disser provided a copy of an e-mail, dated February 24, 2021, from Mr. Janak to Mr. Mantlo telling him of the March 11 hearing with a PDF version of the proposed resolution and a public notice “that should be posted outside the room in which the Township Board normally meets.” *Objectors’ Exhibit G*. It appears from this e-mail that Mr. Mantlo was notified about the hearing, even if not on March 5 or by the Brown Township Board.

Dated this 7th day of October, 2021.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

*Wesley R. Bennett*  
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**Wesley R. Bennett, Commissioner**