

**STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE
Room 1058, IGCN – 100 North Senate
Indianapolis, IN 46204**

**IN THE MATTER OF THE REQUEST)
OF THE TOWN OF LEWISVILLE AND)
THE FRANKLIN TOWNSHIP, HENRY) IML22-002
COUNTY, FOR THE ESTABLISHMENT OF)
AN INITIAL MAXIMUM LEVY FOR)
A FIRE PROTECTION TERRITORY)**

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the request of the Town of Lewisville (“Town”) and Franklin Township (“Township”), all in Henry County and hereafter referred to as “Units”, for an initial operating maximum levy for a fire protection territory (“Territory”). Having considered the issues, the Department now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Indiana Code 36-8-19-5 allows the legislative bodies of at least two contiguous units to establish a fire protection territory for any of the following purposes:
 - (A) Fire protection, including the capability for extinguishing all fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the territory.
 - (B) Fire prevention, including identification and elimination of all potential and actual sources of fire hazard.
 - (C) Other purposes or functions related to fire protection and fire prevention.

2. Per IC 36-8-19-6, to establish a fire protection territory, the legislative bodies of each unit desiring to become a part of the proposed territory must:
 - i. Adopt an ordinance (if the unit is a county or municipality) or a resolution (if the unit is a township) that meets the following requirements:
 - (A) The ordinance or resolution is identical to the ordinances and resolutions adopted by the other units desiring to become a part of the proposed territory.
 - (B) The ordinance or resolution is adopted after January 1 but before April 1.
 - (C) The ordinance or resolution authorizes the unit to become a party to an agreement for the establishment of a fire protection territory.

- (D) The ordinance or resolution is adopted after the legislative body holds at least three (3) public hearings to receive public comment on the proposed ordinance or resolution. The legislative body must give notice of the hearing under IC 5-3-1.
 - (E) The ordinance or resolution includes at least the following:
 - (1) The boundaries of the proposed territory.
 - (2) The identity of the provider unit and all other participating units desiring to be included within the territory.
 - (3) An agreement to impose:
 - (A) a uniform tax rate upon all of the taxable property within the territory for fire protection services; or
 - (B) different tax rates for fire protection services for the units desiring to be included within the territory, so long as a tax rate applies uniformly to all of a unit's taxable property within the territory.
 - (4) An agreement as to how the property that is held by the territory will be disposed of if:
 - (A) a participating unit withdraws from the territory; or
 - (B) the territory is dissolved.
 - (5) The contents of the agreement to establish the territory.
- ii. Hold at least three (3) public hearings to receive public comment on the proposed ordinance or resolution, as follows:
 - (A) The first public hearing must be held at least thirty (30) days before adopting an ordinance or a resolution to form a territory.
 - (B) At least two (2) public hearings must be held after the first public hearing, with the last public hearing held not later than ten (10) days before adopting an ordinance or a resolution to form a territory.
 - iii. The legislative body must make available to the public the following information:
 - (A) The property tax levy, property tax rate, and budget to be imposed or adopted during the first year of the proposed territory for each of the units that would participate in the proposed territory.
 - (B) The estimated effect of the proposed reorganization in the following years on taxpayers in each of the units that would participate in the proposed territory, including the expected property tax rates, property tax levies, expenditure levels, service levels, and annual debt service payments.
 - (C) The estimated effect of the proposed reorganization on other units in the county in the following years and on local option income taxes, excise taxes, and property tax circuit breaker credits.
 - (D) A description of the planned services and staffing levels to be provided in the proposed territory.
 - (E) A description of any capital improvements to be provided in the proposed territory.
 - iv. The notice required for the hearings must include all of the following:
 - (A) A list of the provider unit and all participating units in the proposed territory.
 - (B) The date, time, and location of the hearing.
 - (C) The location where the public can inspect the proposed ordinance or resolution.

(D) A statement as to whether the proposed ordinance or resolution requires uniform tax rates or different tax rates within the territory.

(E) The name and telephone number of a representative of the unit who may be contacted for further information.

(F) The proposed levies and tax rates for each participating unit.

3. According to IC 36-8-19-8, upon the adoption of identical ordinances or resolutions, or both, by the participating units, the designated provider unit must establish a fire protection territory fund from which all expenses of operating and maintaining the fire protection services within the territory, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, and all other expenses lawfully incurred within the territory shall be paid. The purposes described in this subsection are the sole purposes of the fund, and money in the fund may not be used for any other expenses. The provider unit, with the assistance of each of the other participating units, must annually budget the necessary money to meet the expenses of operation and maintenance of the fire protection services within the territory. The provider unit may maintain a reasonable balance, not to exceed 120% of the budgeted expenses. Except as provided in IC 6-1.1-18.5-10.5, after estimating expenses and receipts of money, the provider unit must establish the tax levy required to fund the estimated budget. The amount budgeted must be considered a part of each of the participating unit's budget.

4. Pursuant to IC 36-8-19-8.5, participating units may agree to establish an equipment replacement fund to be used to purchase fire protection equipment, including housing, that will be used to serve the entire territory.

5. The Department, when approving a rate and levy fixed by the provider unit under IC 36-8-19-9, must verify that a duplication of tax levies does not exist within participating units, so that taxpayers do not bear two levies for the same service.

RELEVANT PROCEDURAL HISTORY

6. On March 29, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. *Cover Letter, Record p. 1*. The petition included the following documents:

- Procedure Checklist.
- Financial impact analysis.
- Petition letter.
- Proofs of publication of legal notices.
- Interlocal agreement to form the Territory.
- Town Ordinance No. 030122.
- Township Resolution No. 2022-1.

All of the documents referenced above are included in the Record.

7. The notice of the public hearings was published on January 28, 2022, in the *New Castle Courier Times*. The notice stated the following:

- The Units will hold public hearings on February 7, February 17, and March 1, 2022. The public hearings will be held at the Town office building at 101 E. Main St., Lewisville, Indiana.

- The Units will vote on the establishment of the Territory after the third and final public hearing.
- The Town and the Township are the participating units. The Township is the provider unit.
- There will be a uniform property tax rate within the territory.
- The first year proposed budget, rate, and levy for the Territory, and the share of the levy and budget for each of the participating units.
- A copy of the proposed ordinance and resolution was made available for public inspection at the Town office.
- Persons seeking additional information may contact the Township trustee or the Town clerk-treasurer.

Courier Times Publisher's Claim for the January 28, 2022 public notice, Record p. 18.

8. The Town adopted its ordinance and the Township adopted its resolution on March 1, 2022, to establish the Territory. *Town Ordinance No. 030122, Record pp. 2-4; Township Resolution No. 2022-1, Record pp. 5-7.* The ordinance and resolution state the following:

- The Territory is created under the terms of an interlocal agreement.
- The boundaries of the Territory “extend to the municipal boundaries of the Town of Lewisville and the boundaries of Franklin Township.
- The Township is the provider unit.
- The Town and Township are participating units.
- An advisory board for the Territory “shall act as the governing body of the [Territory], including its day-to-day operations.”
- There shall be a uniform rate of taxation.
- Both Units shall “participating in both the annual budgeting and tax rate establishing process,” but either the Town or Township’s failure or refusal to participate shall not deprive the other unit “of its right to proceed and to approve the annual budget and requisite.”
- The term of this agreement shall be for one year, expiring on June 30, 2023, and shall automatically renew annually until either party adopts a timely resolution or ordinance to terminate the agreement. If either unit withdraws from the Territory, “the withdrawing unit’s maximum permissible ad valorem property tax levy, with respect to fire protection services, shall be initially increased by the amount of the particular unit’s previous year levy.” Any additional increases to the levy attributed to fire protection services “are subject to the tax levy limitations under Indiana law, except for the part of the unit’s levy that is necessary to retire the unit’s share of any debt incurred while the unit was participating.”

Town Ordinance No. 030122, Record pp. 2-4; Township Resolution No. 2022-1, Record pp. 5-7.

9. The interlocal agreement contains provisions concerning the following:

- Creation and purpose of the Territory.
- Imposition of a uniform tax rate.
- Designation and responsibilities of the provider unit.
- Creation and responsibilities of an advisory board.
- Creation and responsibilities of a fire department to serve the Territory.

- Budget development and adoption, including establishing an equipment replacement fund.
- Incurrence of indebtedness, including approval by the Units and the Department in accordance with IC 36-8-19-8.5(b).¹
- Duration of agreement, expansion of Territory by participating units, and conditions of withdrawal from Territory.

Interlocal agreement, Record pp. 8-17.

10. The Units also provided a set of slides made by Krohn & Associates, financial advisor to the Units, detailing the need for the Territory and the impact of the Territory's levies and rates on homeowners. The Units did not provide information about the proposed 2023 budget for the Territory, but did include a proposed levy of \$167,170, a territory operating fund rate of \$0.2909, and an equipment replacement fund rate of \$0.0333. *Financial impact statement, Record 18-22.*

ANALYSIS

11. The Town's ordinance establishing the Territory was adopted by a vote of 2-0. *Town Ordinance No. 030122, Record pp. 2-4.* The Township's resolution was adopted a vote of 3-0. *Township Resolution No. 2022-1, Record pp. 5-7.*

12. Indiana Code 36-8-19-6(b)(4) states that before a participating unit can adopt an ordinance or resolution, it must hold at least three (3) public hearings, with the first public hearing at least thirty (30) days before adoption and the last public hearing at least ten (10) days before adoption. The Units adopted their respective ordinance and resolution on March 1, 2022. The Units held their joint public hearing on February 7, 2022, which is twenty-two (22) days before the adoption date. In addition, the Units held their last public hearing on March 1, 2022, the same day as the date of adoption and not ten (10) days before. Therefore, the Units were not in compliance with IC 36-8-19-6(b)(4).

13. Indiana Code 36-8-19-6(e)(4) states that the ordinance or resolution to establish the Territory must include an agreement as to how property held by the Territory will be disposed of upon dissolution of the Territory or withdrawal of a participating unit. Neither the Town's ordinance nor the Township's resolution includes a provision about the disposition of property held by the Territory. This provision was added by [House Enrolled Act 1065-2021](#), effective July 1, 2021. Therefore, the Units were not in compliance with IC 36-8-19-6(e)(4).

14. Therefore, the Department finds that the Units did not validly establish a fire protection territory in compliance with the requirements of IC 36-8-19-6.

CONCLUSION

15. In reliance on the Record as documented above, the Department finds that the Units have not complied with the procedural obligations under IC 36-8-19 in establishing the Territory. The

¹ Ind. Code § 36-8-19-8.5(b) stated prior to 2016 that the Department must approve debt prior to incurrence and payment of debt service out of the equipment replacement fund. This provision was removed by Section 25 of House Enrolled Act 1273-2016.

Units did not hold the public hearings within the timeframe required by IC 36-8-19-6(b). In addition, the Units did not include a provision describing the disbursement of property held by the Territory pursuant to IC 36-8-19-6(e). Therefore, the Department finds that the Units have not established a fire protection territory for which an initial maximum levy can be approved.

16. Therefore, the Department declines to approve an initial maximum levy for the Territory.

Dated this 10th day of August, 2022.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner