

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

IN THE MATTER OF THE REQUEST)
OF BOLIVAR TOWNSHIP, PINE)
TOWNSHIP, AND THE TOWN OF)
OTTERBEIN, BENTON COUNTY,)
SHELBY TOWNSHIP, TIPPECANOE)
COUNTY, MEDINA TOWNSHIP, WARREN) IML21-008
COUNTY, AND ROUND GROVE)
TOWNSHIP, WHITE COUNTY, FOR THE)
ESTABLISHMENT OF AN INITIAL)
MAXIMUM LEVY FOR THE)
OTTERBEIN FIRE PROTECTION)
TERRITORY)

FINAL DETERMINATION

The Department of Local Government Finance (“Department”) has reviewed the request of Bolivar Township, Pine Township, and the Town of Otterbein, all in Benton County, Shelby Township in Tippecanoe County, Medina township in Warren County, and Round Grove Township in White County, hereafter referred to as “Units”, for an initial operating maximum levy for the Otterbein 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 a public hearing 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) The contents of the agreement to establish the territory.

- ii. Hold a public hearing, at least 30 days before adopting the ordinance or resolution, at which the legislative body makes 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.

- iii. Hold at least one additional public hearing before adopting an ordinance or a resolution to form a territory, to receive public comment on the proposed ordinance or resolution. The notice required for this hearing 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 April 1, 2021, the Units submitted to the Department a petition "for creation of a fire territory." The petition included the following documents:

- A narrative describing the background and the Territory's formation.
- A powerpoint presentation for the public hearings.
- The adopting ordinances and resolutions (hereafter "Adopting Ordinances and Resolutions"):
 - Otterbein Town Ordinance #2021-0329A.
 - Bolivar Township Resolution.
 - Pine Township Resolution.
 - Shelby Township Resolution.
 - Medina Township Resolution.
 - Round Grove Township Resolution.

None of the township resolutions had resolution numbers.

- Publisher's claims for the notice of public hearing for the following newspapers (hereafter "Publishers' Claims"):
 - Benton Review
 - Herald Journal
 - Lafayette Journal & Courier

- Lafayette Leader
- Review Republican
- Wolcott Enterprise

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

7. According to the Units' narrative, the Territory will comprise the service area of the Otterbein Area Volunteer Fire and Rescue Department ("OAVFR"). In addition to the Town of Otterbein, OAVFR has been supported through the townships and fundraising. The Units claim the COVID-19 pandemic has caused fundraising revenue to drop and also caused the township trustees to rethink how the OAVFR is being funded. The Units propose to create the Territory to increase the maximum property tax levy available, as current levies from the townships are not adequate to meet NFPA safety requirements and other basic needs. *Record, p. 1.*

8. The Units held three public hearings, before adopting their respective ordinances or resolutions, on February 22, March 2, and March 25, all in 2021. The Units advertised all three public hearings required by IC 36-8-19-6 in the following newspapers:

- For the entire area, in the *Lafayette Journal & Courier* on February 11, 2021.
- For Bolivar and Pine Townships and the Town of Otterbein, in the *Benton Review* on February 10, 2021.
- For Shelby Township, in the *Lafayette Leader* on February 11, 2021.
- For Medina Township, in the *Review Republican* on February 11, 2021.
- For Round Grove Township, in the *Wolcott Enterprise* and the *Herald Journal* on February 11, 2021.

Likewise, the Units advertised the March 25 public hearing in the following newspapers:

- For the entire area, in the *Lafayette Journal & Courier* on March 8, 2021.
- For Bolivar and Pine Townships and the Town of Otterbein, in the *Benton Review* on March 10, 2021.
- For Shelby Township, in the *Lafayette Leader* on March 11, 2021.
- For Medina Township, in the *Review Republican* on March 11, 2021.
- For Round Grove Township, in the *Wolcott Enterprise* and the *Herald Journal* on March 11, 2021.

Publishers' Claims.

9. Following the third public hearing, the Town of Otterbein adopted an ordinance and Medina Township adopted a resolution on March 29, 2021, Bolivar, Pine, and Round Grove Townships adopted their respective resolutions on March 26, 2021, and Shelby Township adopted its resolution on March 25, 2021. *Adopting Ordinances and Resolutions.* The resolutions & ordinance provide that the "boundaries of the [Territory] will include "Benton County: Otterbein Town, Bolivar Township, Pine Township; Tippecanoe County: Shelby Township; Warrant County: Medina Township; White County: Round Grove Township." The adopting documents also identify Shelby Township as the provider unit and the remaining Units as participating units. The adopting documents state that the Territory "will adopt a uniform tax rate upon all of the taxable property within the territory for the fire protection services to fund the Fire Protection Operating Fund at .035 for all taxable property." They also state that the Territory will establish an equipment replacement fund "at .0333 for all taxable property in the fire territory." Finally, the adopting documents state that any funds in the Township Fire Fund and Cumulative Fire

Fund will be transferred to the Territory Building and Equipment Replacement Fund” on December 31, 2021. *Adopting Ordinance and Resolutions.*

10. The Record indicates that the Units will establish an equipment replacement fund for the Territory. This fund was advertised in the same public hearing notices as those for the hearings on the Territory establishment. The Department has disposed of the equipment replacement fund in a separate order.

11. In support of their request for an initial maximum levy, the Units provide the following proposed budgets, rates, and levies:

Units	Operating Fund		Equipment Replacement Fund	
	Rate	Levy	Rate	Levy
Town of Otterbein	\$0.035	\$11,981	\$0.0333	\$11,399
Bolivar Township	\$0.035	\$22,153	\$0.0333	\$21,077
Pine Township	\$0.035	\$17,908	\$0.0333	\$17,038
Shelby Township	\$0.035	\$56,925	\$0.0333	\$56,925
Medina Township	\$0.035	\$15,857	\$0.0333	\$15,087
Round Grove Township	\$0.035	\$44,164	\$0.0333	\$41,019
Territory Total		\$171,894	\$0.0333	\$163,545
Territory Budget				
	2022	\$160,000	\$90,000	
	2023	\$166,400	\$90,000	
	2024	\$173,056	\$90,000	

Therefore, the Units propose a 2022 budget of \$160,000 for the Territory operating fund, funded at a rate of \$0.035 for each Unit. The Units also propose a budget of \$90,000 for the equipment replacement fund. The Record states that these proposed tax rates “are exceptionally low” but that was the decision of the Units and of the OAVFR. *Record, p. 2.*

12. The Units also included a presentation given by Bill Jones, financial advisor for the Units, before the Units. In this presentation, Mr. Jones stated that each township participating unit currently has a fire maximum levy, but each of them were never developed based on need. This presentation also explained why a fire protection territory is being formed in lieu of a fire protection district for the purpose of increasing the tax levy for fire protection in the service area. The presentation also included a fiscal impact analysis. This analysis was also included in the narrative. *Record, pp. 17-26.*

13. For purposes of the levy adjustments required by IC 36-8-19-12, the Units provided calculations showing that the Town of Otterbein will have a reduced levy by an amount of \$7,200, as applied to the Town’s general fund. This amount is based on the budgeted pay-2020 expense for the Town for fire protection. *E-mail from Bill Jones to David Marusarz, June 25, 2021, at 12:19 p.m.*

ANALYSIS

14. The petition does not cite to a statutory authority for the Department to approve the creation of the Territory. Indiana Code 36-8-19-6 describes the process that the participating units must follow to establish a territory. Neither that statute nor any other provision in IC 36-8-19 requires the Department’s approval before the territory can come into existence. The Department, however, may decline to approve a maximum levy for the territory if the statutory process was not followed and thus the territory was not legally formed.

15. In reliance on the Record as documented above, the Department finds that the Units complied with the procedural obligations under IC 36-8-19 in establishing the Territory.

16. The Units represented that their initial max levy is based on an initial tax rate of \$0.035 and a purported initial budget of \$160,000 for the Territory operating fund. The Units did not represent the expected expenses for the Territory, including personnel services, capital outlays, etc. *Record, p. 2.*

17. The Units represented that the tax rates for the operating and equipment replacement fund were agreed to by the local officials because they did not want to put a significant tax burden on the community. The petition narrative stated these rates “would provide funds basic service[sic] and create a foundation for safety management” and were not negatively received by the agricultural community who make up a large part of the Territory’s service area. *Record, p. 2.*

18. Using the combined pay-2021 CNAV for the Units as a basis (\$478,921,051), a rate of \$0.035 is expected to yield \$167,622 in revenue to the Territory in 2022. This is a 232% increase from the current levy attributable to the Units (\$70,410¹). As part of their miscellaneous revenue analysis, the Units represent that the new maximum levy for the Territory will increase LIT distributions to each of the participating units by a total of \$40,200 in 2023:

Participating Unit	Without FPT	With FPT	Change
Bolivar Township	\$7,539	\$14,002	\$6,463
Pine Township	\$5,063	\$10,162	\$5,099
Town of Otterbein	\$50,070	\$55,257	\$5,187
Shelby Township	\$15,972	\$15,952	(\$20)
Medina Township	\$7,150	\$10,468	\$3,318
Round Grove Township	\$37,283	\$57,436	\$20,153
Total			\$40,200

Record, pp. 5-8. Likewise, the new maximum levy is expected to shift excise and CVET tax distributions to the Units from other units in the respective counties by about 4-5%, starting in 2022. *Record, pp. 8-11.* The Units have not indicated that LIT, excise, or CVET revenue would be dedicated to the Territory.

¹ This amount includes \$7,200 reported by the Town of Otterbein in its Budget Form 1 for pay-2020 as expenses for fire services from its general fund that was paid for by property tax.

19. Indiana Code 36-8-19-8(c) allows the provider unit to “maintain a reasonable balance, not to exceed one hundred twenty percent (120%) of the budgeted expensed.” For 2022, the Units represent that the Territory will have a budget of \$160,000 for the operating fund. Therefore, the Township can maintain an operating balance of \$192,000 ($\$160,000 * 1.2 = \$192,000$). Therefore, a levy of \$171,894 would be less than what the law allows the provider unit to have as an operating balance. The Department assumes that LIT, excise, or CVET revenue would not be dedicated to the Territory, as doing so may bring the operating balance for the Territory above what is allowed by statute when added to the levy.

20. The Department finds that the Units have only provided as evidence of actual or planned expenses a proposed budget amount of \$160,000 for 2022. A levy to maintain an operating balance of \$11,894, added to the budget, yields a levy of \$171,894 to fund operations for the Territory in 2022.

21. Thus, expenses totaling \$160,000 plus an operating balance of \$11,894 ($\$160,000 + \$11,894$) equals a property tax levy of \$171,894. The initial maximum levy for the Territory’s operating fund, therefore, is \$171,894.

22. For purposes of IC 36-8-19-9 and 12, the respective certified 2021 Budget Orders for Benton, Tippecanoe, Warren, and White Counties indicates that the Units each have the following funds from which fire protection services can be paid:

Participating Unit	Fund Name	DLGF Fund Number
Bolivar Township	Township Fire	1111
	Cumulative Fire	1190
Pine Township	Township Fire	1111
	Cumulative Fire	1190
Town of Otterbein	General	0101
Shelby Township	Township Fire	1111
	Cumulative Fire	1190
Medina Township	Township Fire	1111
Round Grove Township	Township Fire	1111
	Cumulative Fire	1190

23. Pursuant to IC 36-8-19-9 and 12, the township fire funds for each of the Townships will be eliminated and their levies reduced to \$0. Likewise, the cumulative fire funds for Bolivar, Pine, Shelby, and Round Grove Townships will be eliminated and their levies reduced to \$0. The Town of Otterbein’s civil maximum levy will be reduced by \$7,200.

CONCLUSION

24. The Department hereby approves a Territory operating maximum levy of \$171,894 for Pay-2022. This figure does not include any dollars attributable to an equipment replacement fund. The approved levy will be reduced by \$11,894 for Pay-2023, as the Department does not allow a levy for an operating balance after the first year.

25. To ensure there is no double taxation as prohibited by IC 36-8-19-9, the Townships' fire funds, including the cumulative fire fund, will be discontinued for 2022. The Town of Otterbein's civil maximum levy will be reduced by \$7,200.

Dated this 21st day of July, 2021.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

Wesley R. Bennett

Wesley R. Bennett, Commissioner