

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

**IN THE MATTER OF THE REQUEST)
OF ADAMS TOWNSHIP AND THE)
TOWN OF ST. PAUL, DECATUR COUNTY,) IML22-011
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 Adams Township (“Township”) and the Town of St. Paul (“Town”), all in Decatur 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 June 30, 2022, the Units submitted to the Department a petition for an initial maximum levy for the Territory. The petition included the following documents:

- Town Ordinance 2022-2, with interlocal agreement.
- Adams Township Resolution 32901, with interlocal agreement.
- Table of budgeted spending for 2023.
- A document containing the following:
 - o Future budget needs
 - o Table of budgeted spending by the City of Greenburg in 2022
 - o Printout from Salary.com regarding firefighter salaries.
 - o Printout from Indiana State Personnel Department website showing table of health insurance plans.
- Proofs of publication of legal notices (collectively "Public Notices").

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

7. The notices of public hearings were published on February 10, 2022, in the *Shelbyville News* and February 12, 2022, in the *Greensburg Daily News*. Both notices stated that the Town council

and Township board will hold public hearings on February 24, March 10, and March 29, 2022. The notices also state that the Units will vote on the establishment of the Territory after the March 29 public hearing. *Greensburg Daily News Publisher's Claim for the February 12, 2022 public notice, Record, pp. 1-2; Shelbyville News Publisher's Claim for the February 10, 2022 public notice, Record, pp. 3-4.*

8. The public notices also state that the proposed ordinance and resolution will be available for public inspection at the hearings, as well as the contact information for the Township Trustee and a Town councilmember who may be contacted for question about the Territory. *Public Notices, Record, pp. 1-4.*

9. The Town adopted an ordinance and the Township adopted a resolution on March 20, 2022, to establish the Territory. *Town Ordinance 2022-2, Record p. 21; Township Resolution 32901, Record, p. 38.*

10. The ordinance and resolutions state the following:

- The boundaries of the Territory will include the Town and the Township.
- The Town will be identified as the provider unit.
- The Units agree that property tax rates imposed on all taxable property in the Territory will be uniform.
- An Interlocal Agreement is attached and provides for the following:
 - o The creation of an operating fund for the Territory by the Provider Unit. The fund budget will be approved by the Town Board, subject to the procedure detailed in the interlocal agreement, and the Units will establish a tax levy subject to applicable levy controls.
 - o The establishment of an equipment replacement fund, with a separate tax levy.
 - o The creation of an Executive Board, to perform certain administrative planning and operating business of the Territory.
 - o The Units can do all other acts under IC 36-8-19 not otherwise agreed upon or limited by the interlocal agreement.
- The Provider Unit is the enforcement authority over uniform fire and building codes.

Town Ordinance 2022-2, Record p. 6; Township Resolution 32901, Record, p. 23.

11. The interlocal agreement includes the following provisions:

- The purposes of the Territory.
- A statement that there will be a uniform tax rate.
- The Town's responsibilities as provider unit, including ordinance enforcement.
- The creation of an executive board, including composition, powers, and duties.
- Budgeting procedures.
- The creation of an operating fund and equipment replacement fund.
- Incurrence of debt.
- Retention of funds and capital assets prior to forming the Territory.
- Transfer of property upon forming the Territory.
- Reversion of title to property upon dissolution of Territory.

Interlocal Agreement, Record pp. 8-21, 25-38.

ANALYSIS

12. The Town's ordinance establishing the Territory was adopted by a vote of 2-1. *Town Ordinance 2022-2, Record, p. 7*. The Township's resolution has two signatures, one from a boardmember and one from the Township Trustee, the latter apparently serving as a tie-breaker. *Township Resolution 32901, Record, p. 24*. Presumably, the Township Trustee acted under the authority of IC 36-6-6-4(d), which allows the trustee to break a tie vote. It is not clear what the actual votes of the Township Board is because the resolution only has one set of signature lines for each boardmember, without any further elaboration on whether a signature represents a vote in favor or opposition. Likewise, the Trustee's signature is included where the attestation would be, with the word "Attest" above the signature scratched off, and with the words "tie-break" in parentheses next to the signature. Presumably, as there are three boardmembers and the Trustee thought it necessary to break a tie, there was one member who voted yes and one who voted no, with one member either abstaining or absent.

13. The public notices state that the Units will hold three public hearings, the last being on March 29, and that after the last public hearing the Units will vote on the establishment of the Territory. Both the Town ordinance and Township resolution state that the respective actions were taken on March 29. Indiana Code 36-8-19-6(b)(4) requires that the last public hearing be held "not later than ten (10) days before the legislative body votes on the adoption of the ordinance or resolution." Neither the notices nor the ordinance or resolution indicate that there was a ten (10) day period in between the last public hearing and the adoption.

14. Therefore, even if the Township resolution was validly adopted, neither the resolution nor Town's ordinance were adopted after the 10-day period following the third public hearing. Therefore, the Department cannot find that the territory was validly established.

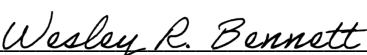
CONCLUSION

15. In reliance on the Record as documented above, the Department finds that the Units did not comply with the procedural obligations under IC 36-8-19 in establishing the Territory. Specifically, the Units failed to adopt the ordinance and resolution within the timeframe required by IC 36-8-19-6(b). 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, Commissioner