

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

<b>IN THE MATTER OF THE PETITION</b>	)	
<b>FOR REVIEW ALLEGING ARTIFICIAL</b>	)	
<b>DIVISION OF A CONTROLLED</b>	)	<b>CP20-002 &amp;</b>
<b>PROJECT BY TRI-TOWNSHIP</b>	)	<b>CP20-003</b>
<b>CONSOLIDATED SCHOOL</b>	)	
<b>CORPORATION</b>	)	

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**FINAL DETERMINATION**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**INTRODUCTION**

1. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 provide that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively.
2. Indiana Code 6-1.1-20-3.1 and IC 6-1.1-20-3.6 also provide that a person that owns property within a political subdivision or a person that is a registered voter residing within a political subdivision may file a petition with the Department of Local Government Finance (“Department”) objecting that the political subdivision has artificially divided a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process or referendum process, respectively. The petition must be filed not more than ten days after the political subdivision gives notice of the preliminary determination to issue the bonds or enter into the lease for the project. If the Department receives such a petition, it must, not later than 30 days after receiving the petition, make a final determination on the issue of whether the capital projects were artificially divided.
3. A controlled project is, with some exceptions, any project financed by bonds or a lease that will cost a political subdivision more than the lesser of \$5,575,690 or an amount equal to 1% of the total gross assessed value of property within the political subdivision on the last assessment date, if that amount is at least \$1,000,000. IC 6-1.1-20-1.1; Department Nonrule Policy Document #2020-1.
4. A school corporation is a political subdivision. IC 6-1.1-1-12.

## RELEVANT PROCEDURAL HISTORY

5. On November 29, 2020, Justin Kiel, who owns property within the jurisdiction of the Tri-Township Consolidated School Corporation (“Tri-Township Schools” or “Corporation”), submitted a petition (the “Kiel Petition”) to the Department. On December 6, 2020, Lisa Rosenkranz, who also owns property within the jurisdiction of the Corporation, submitted fifty-seven (57) State Form 55888s by fifty-seven (57) individuals claiming to reside or be a registered voter within Tri-Township Schools (the “Rosenkranz Petitions”).<sup>1</sup>

6. The following exhibits were included in the Petition and thus part of the Record:

Petitioner Exhibit 1: State Form 55888 – Petition for Review of Proposed Controlled Project, submitted by Justin Kiel on November 29, 2020.

Petitioner Exhibit 2: Written statement of Justin Kiel.

Petitioner Exhibit 3: State Form 55888s, submitted by Lisa Rosenkranz on December 6, 2020.

Petitioner Exhibit 4: Written statement of Lisa Rosenkranz et al.

7. The Kiel Petition made the following claims:

- Tri-Township Schools was formed in 2011 has taken on two major construction projects at Wanatah Elementary/Middle School (“Wanatah”), which included the construction of two new classrooms, HVAC upgrades, and the renovation and expansion of administrative offices.
- The Board for Tri-Township Schools (“School Board”) proposed in 2013 to relocate the high school to Wanatah (“Proposed Relocation Project”), but no final decision was made at this time.
- Performance Services, a design-builder, conducted a facility study of Tri-Township Schools’ two buildings in 2015. Based on this study, Performance Services suggested Tri-Township Schools could expand Wanatah by adding six (6) new classrooms and adding cafeteria and office space. This finding was discussed by the School Board in 2015 but no final decisions were made at the time.
- The School Board in 2016 began to discuss possibly expanding Wanatah. A newspaper article from the *Regional News* questioned whether the Proposed Relocation Project is being set up to avoid being considered a controlled project and thus subject to public approval, after which the School Board did not continue with the proposal.
- Another study was done in 2018 to conduct a demographics and tax structure study of Tri-Township Schools. The results of this study were made public in 2020 as a rationale to close the LaCrosse High School building (“LaCrosse”).

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<sup>1</sup> The petitions submitted by Ms. Rosenkranz appear to be independent from the one submitted by Mr. Kiel, although they are related to the same project. Indiana Code 6-1.1-20-3.1(c) & 3.6(j) do not contemplate multiple petitions being submitted on the same project, let alone a petition on the same project being submitted at a later time. The Department will regard Ms. Rosenkranz’s submission as having its own thirty (30) day period by which the Department must make a determination. In the interest of administrative economy, however, the Department will dispose of both of the petitions in this order. Mr. Kiel and Ms. Rosenkranz, et al., will be referred to as “Petitioners” where appropriate.

- In February 2020, Tri-Township Schools announced the recommendation to close LaCrosse. A public meeting was held soon after which included a tour of LaCrosse facilities and presentations by Performance Services and Stifel Financial Corporation (“Stifel”).
- Tri-Township Schools manipulated public perception about the need for the Proposed Relocation Project by showing neglected maintenance of LaCrosse and inflating renovation costs. By contrast, Tri-Township Schools broke out renovations of Wanatah into three separate projects, totaling \$3.48 million. Stifel stated at a public meeting at Tri-Township Schools told them to estimate costs below the controlled project threshold (i.e., the amount by which Tri-Township Schools would be subject to the controlled project requirements of IC 6-1.1-20).
- The January 1, 2020 gross assessed value of Tri-Township Schools is \$272,334,800. Therefore, the controlled project threshold is \$2.723 million.
- A historic renovation study, conducted at the request of members of the public and Indiana Landmarks, found that estimates provided by Performance Services were overestimated.
- On September 17, 2020, Tri-Township Schools Superintendent Kelly Shepherd presented his plan to relocate the high school to Wanatah, at a cost of \$2.72 million. This cost would be broken up into hard costs (\$2.5 million), soft costs (\$89,000), and costs associated with the bond issue (\$131,000). However, construction costs going up due to the pandemic would not make this feasible.
- The School Board held a hearing on the preliminary determination on the Proposed Relocation Project (the “1028 hearing”). The School Board President, Tim Guse, was later asked if the cost estimate was expected to be above or below the controlled project threshold. Mr. Guse is claimed to have said “he didn’t believe there was any certainty of the expected project cost other than speculation” and he believed the costs would be more certain after bids are received.
- Tri-Township Schools held the 1028 hearing on November 19, 2020. Tri-Township Schools told the public that the cost of the Proposed Relocation Project was estimated at \$2.72 million and would include five (5) new classrooms, two (2) renovated classrooms, new restrooms, and “possible other” additions such as student parking, furnishings, and equipment (“Possible Future Projects”). The Proposed Relocation Project would be completed through a design-build process.

*Petition Exhibit 2.*<sup>2</sup>

8. The Kiel Petition then made the following arguments that the Corporation artificially divided the Proposed Relocation Project:

- It is unlikely that a \$2.72 million project “even provides the bare minimum necessary to educate kids,” especially since classroom furnishings and parking spaces are not included in the costs.
- The scope of the Proposed Relocation Project was expanded to include restrooms while at the same time having its cost lowered, raising additional questions about whether this project can stay below the controlled project threshold.

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<sup>2</sup> The Petition also made claims about the lack of transparency by Tri-Township Schools and abuse of executive sessions under the Open Door Law. Such claims are outside the scope of IC 6-1.1-20-3.1 and will not be considered.

- The project is so limited in scope that there will likely be other projects in the future. The project does not include the cafeteria expansion as recommended by Performance Services in 2015. Tri-Township Schools has also expressed interest to renovate the art room and construct another athletics facility. Members of the public are concerned that there will be more classroom additions needed, as suggested by the renderings shown at the February 27 public meeting.
- In reference to the standard set by IC 6-1.1-20-3.1(c) & 3.6(j):  
 “It is not reasonable, given the nature of [Tri-Township Schools’] actions, to believe that it has no intention to undertake any subsequent projects related to supporting the relocation of the high school to [Wanatah]. Cafeteria space, gymnasium space, classroom furniture, administrative office space, road relocation, and parking spaces are not individually desirable projects; they are all integral to the functions of a high school. Even if the school corporation can argue that it can wait a short period of time before constructing those components, by initiating the first project, it ensures those subsequent projects will become inevitable.”
- Tri-Township Schools has illustrated its intent to conduct smaller projects when it 1) followed Performance Services’ recommendations to expand the administrative offices and again when it attempted the cafeteria expansion; 2) advised Stifel to keep project costs below the controlled project threshold; 3) revised numbers in September 2020 to keep the costs below the controlled project threshold; 4) admitted that a referendum on the Proposed Relocation Project likely would not pass; 5) held every construction project undertaken since its founding below the threshold.
- The piecemeal approach to building projects is burdening taxpayers with higher overall cost of construction, including mobilization costs, professional service costs, and bond issuance costs.
- When considering interest and principal, the total cost to taxpayers will be over \$4 million through the next twenty (20) years.

*Petition Exhibit 2.*

9. The Rosenkranz Petitions contained the following claims and arguments:

- Tri-Township Schools has purposefully kept the Proposed Relocation Project below the controlled project threshold by setting the maximum project cost and then working backward into what could be done, rather than determine the needs of students.
- James Elizondo, from Stifel, told the public at a February meeting that he was told to use the controlled project threshold for calculating the tax impact. This illustrates Tri-Township Schools wanted to avoid the possibility that taxpayers could stop their project.
- Tri-Township Schools has kept projects below the controlled project threshold in the past to avoid the public initiating a petition and remonstrance.
- Corporation administrators avoid publicly explaining what future costs will be necessary by the Proposed Relocation Project. Such costs include potential demolition of the high school building, continued use of the gymnasium at the high school campus, and expanding Wanatah’s cafeteria. The Proposed Relocation Project does not account for classroom furniture, office space, road relocation, or parking spaces, which will likely be in a future project that will also be under the controlled project threshold.

- School officials said privately they plan to build an athletics facility and expand programming opportunities even though they are not accounted for in the Proposed Relocation Project.
- Tri-Township Schools has undertaken smaller projects for the purpose of relocating the high school, done as a response to a 2015 study that listed what needed to be done to accommodate the high school in Wanatah. This includes upgrading the HVAC system, adding classrooms, and renovating the administrative office.
- Superintendent Shepherd stated on a radio interview that there will be several phases with the Proposed Relocation Project.
- The \$2.72 million cost does not include interest, which means the total cost paid by taxpayers will be higher than the controlled project threshold.

*Petitioner's Exhibit 4.*

10. On November 30, 2020, the Department contacted Tri-Township Schools, asking it to respond to the contentions made in the Petition no later than December 14, 2020. *E-mail from David Marusarz, Deputy General Counsel of Department, to Kelly Shepherd, Corporation Superintendent, November 30, 2020, 1:40 P.M. EST.*

11. On December 1, 2020, Tri-Township Schools forwarded to the Department a link to its website which contained the following documents relevant to the Proposed Relocation Project. These documents have been incorporated into the Record:

Corporation Exhibit A: Tri-Township Schools High School Strategic Plan, both as an Adobe Acrobat Document and as a Powerpoint Presentation.

Corporation Exhibit B: LaCrosse Condition Assessment by Ratio Architects, Inc., dated June 2020.

Corporation Exhibit C: Facility Study by Performance Services, dated April 30, 2015.

Corporation Exhibit D: Study of Tri-Township Schools and Community Demographics and Tax Structure, prepared by Dr. Robert L. Boyd, Professor Emeritus, Indiana State University, dated February 2018.

Corporation Exhibit E: Powerpoint Presentation by Daniel Rawlins of Rawlins Group, dated November 19, 2020.

Corporation Exhibit F: Powerpoint Presentation by Jim Elizondo from Stifel, dated November 19, 2020.

12. On December 9, 2020, counsel for Tri-Township Schools submitted a response to the Petitions on behalf of Tri-Township Schools ("Response"). The Response contains the following exhibits:

Corporation Exhibit G: Excerpts of minutes and project resolution (the "1028 Resolution") with respect to the Proposed Relocation Project adopted by the School Board on November 19, 2020.

Corporation Exhibit H: Certificate of LaPorte County Auditor of Tri-Township Schools gross assessed value.

Corporation Exhibit I: List of Tri-Township Schools facility improvements made over the last nine (9) years.

Corporation Exhibit J: Map of townships in LaPorte County that include the Towns of Wanatah and LaCrosse.

Corporation Exhibit K: Presentation by Tri-Township Schools describing the Proposed Relocation Project, presented on November 19, 2020. This included, among other things, copies of Corporation Exhibits E & F.

13. The Response addressed the claims made in both the Kiel Petition and the Rosenkranz Petitions. First, with respect to the controlled project threshold, the gross assessed value of Tri-Township Schools is \$292,423,980. Therefore, the actual threshold is \$2,924,239. Also, the repayment of interest has never been included in the cost in the calculation of total project costs. This is based on not only the state legislature never formalizing this in the definition of controlled project under IC 6-1.1-20, but also on prior Department determinations made prior to July 2008.<sup>3</sup>

14. The Response stated that Tri-Township Schools has discussed relocating the high school at publicly held meetings since 2011. The taxpayers have had multiple opportunities to change the membership of the School Board through elections in response to this discussion and have not done so. These public meetings culminated in a meeting in February 2020 that the high school will be relocated to Wanatah. The Response also stated that, even though this is an uncontrolled project, it will continue to hold public meetings prior to the issuance of the 2021 bonds.

15. The Response also addressed the claims about the past projects undertaken by Tri-Township Schools; specifically, the 2014 classroom and HVAC renovations at Wanatah (“2014 Project”) and the administrative office expansion in 2015 (“2015 Project”). The 2014 Project was done as a response to discussions in 2012 and 2013 “about safety in the schools and the potential of an active shooter (after the Sandy Hook shooting) in addition to discussions about potential long-range plans for facilities in the School Corporation.” The 2015 Project was done following recommendations from the Rawlins Group “to address the needs in and related to the administration office.” These projects did not necessitate a subsequent follow-up project, demonstrating that the Petitioners’ argument that the Proposed Relocation Project will necessitate a future capital project is false. Moreover, the Petitioners wrongly assume that any series of projects at the same building funded by bonds constitute a single project. The legal test for artificial division is whether the proposed project “can stand alone and have value, in itself, irrespective of any past or future project.”

16. The Response then argued that the Proposed Relocation Project itself can occur without the Possible Future Projects. The Corporation claims this was communicated to the public at the 1028 hearing. Dan Rawlins, architect and design criteria developer at the Rawlins Group, mentioned at the hearing potential bid alternates which “may be included after bids are received, if there are sufficient bond proceeds remaining.” The Response goes on to argue that Tri-Township Schools is required to hold the 1028 hearing before receiving construction bids, in addition to other meetings, hearings, and legal step related to the lease agreement in order to issue the bonds, also all prior to receiving bids. The Possible Future Projects were therefore listed as such to the extent they are within the maximum total project cost and bond issue.

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<sup>3</sup> This statement is apparently a reference to the Department’s review of proposed bonds or leases of over five (5) years under IC 6-1.1-18.5-8. This review of the Department no longer applies to debt for which a preliminary determination or decision to issue the debt was made after June 30, 2008.

Separating the Possible Future Projects from the proposed project does not, by itself, signal Tri-Township Schools has artificially divided a project.

17. Regarding the Possible Future Projects, the Corporation claims they are not essential to the relocation of the high school. Tri-Township Schools “has more than enough student desks, equipment, furnishings and technology at LaCrosse which it can easily use at Wanatah if the alternate for new furnishings and equipment cannot be awarded.” In addition, a possible student parking expansion is desired as “the current site can be crowded during one-off events like a play or back-to-school nights” although “coordination of events so that overlapping K-8 and high school events do not occur on the same evening should be able to accommodate the additional students if needed” if parking is not expanded. Therefore, the relocation of the high school is an independently desirable end. However, even if Tri-Township Schools pursues the Possible Future Projects, they will have their own controlled project thresholds independent of the Proposed Relocation Project or any past or future project.

18. The Response then concludes by stating the claim that Wanatah cannot operate as a functioning high school without additional projects is unfounded and no subsequent projects are inevitable for the following reasons. First, since Performance Services in 2015 recommended an expansion of the cafeteria, Tri-Township Schools has reconfigured the cafeteria so that an expansion would not be needed. The School Board has no plans to expand the cafeteria in the future. Second, Tri-Township Schools also does not have any plans to expand the gymnasium and baseball fields, which will continue to be used for middle school and high school sporting events. Third, Wanatah has ample space to support all administrative staff. Fourth, future classroom expansions would only take place if student enrollment grows significantly. Enrollment trends show a reduction in enrollment. Finally, the road relocation will also not be necessary as the area of the school expansion is planned to move to a different side of the building to avoid the costs associated with moving the road.

### **FINDINGS OF FACT**

19. The minutes of the November 19, 2020 School Board meeting show that the purpose of the meeting was to hold a public hearing “whenever a school corporation proposed to construct or renovate a school building at a cost in excess of one million dollars.” The minutes state that presentations were made to the public about the need for and details of the Proposed Relocation Project, an evaluation of the existing facilities, an estimated cost schedule, and tax impact on the Proposed Relocation Project. The minutes state that after public testimony was received, the School Board approved the 1028 Resolution. *Corporation Exhibit G.*

20. The 1028 Resolution states that the purpose of the Proposed Relocation Project is “to provide an improved educational environment for students.” The estimated hard and soft construction costs of the Relocation Project is \$2,584,000, with an additional \$136,000 estimated cost of issuance, the total being \$2,720,000. These costs would be paid out of the Operations Fund, Common School Fund Loan, and “a general obligation bond issue and/or a building corporation bond issue with an anticipated impact on the Debt Service Fund tax rate of \$0.099 per \$100 assessed valuation based on an estimated \$203,791,704 assessed valuation beginning in 2022.” *Corporation Exhibit G.*

21. On October 2, 2020, the LaPorte County Auditor, Joie Winski, provided a certified statement that the gross assessed value of the Corporation, based on the LaPorte County Abstract for 2020-pay-2021 taxes, is \$292,423,980. *Corporation Exhibit H.*

22. The Ratio Assessments study shows LaCrosse consisting of the high school building, the gymnasium connected to the high school building by a corridor, an outdoor basketball court, a playground, and a parking lot. LaCrosse was constructed in 1890 and has operated continuously since 1915. The Ratio Assessments study mentions state law has adopted the 2012 International Building Code standards, thus renovations to older buildings must conform to these standards. The Ratio Assessments study makes the following recommendations, according to priority:

<b>High Priority Items</b>	
Description	Estimated Cost
Demolish Playground Equipment, Provide New Paved Drop-Off Lane & Handicap Parking including Signage	\$199,489
Excavate Building Perimeter, Apply Waterproofing, Install Foundation Drain, Connect to Storm & Rework (1) Downspout	\$50,462
Demolish (2) Fire Escapes & Repair Masonry	\$28,947
Construct Elevator/Stair Addition on East Elevation, Rework East Elevation Doors on (3) Locations, Construct Reception & Connector to Gymnasium	\$1,183,977
Demolish Existing HVAC System including Window Air Conditioning Units. Installation of New HVAC & Ventilation Systems	\$909,406
Demolish Existing Electrical System. Installation of New Expanded System with Capabilities for HVAC & Elevator. Provide Code Compliant Egress Lights along with Additional Receptacles & Sensor Controlled Light Swithes	\$900,565
Rework (4) Restrooms to be ADA-Compliant with New Fixtures. Reduce Fixture Count as required to Achieve Appropriate Clearances.	\$81,592
Install New Security System complete with Cameras, Speakers & Access Control Door Hardware. Upgrade Technology Systems. Provide Wayfinding Signage.	\$404,180
Replace Door Hardware all Locations with Exterior Access Control & New Interior Latchsets	\$50,220
<b>Total</b>	<b>\$3,808,837</b>
<b>Medium Priority Items</b>	
Description	Estimated Cost
Upgrade Exterior Lighting Package to include Compliant Egress Lighting and Site Lighting.	\$142,848
Provide Structural Repairs to Bay Window Cantilever.	\$13,516
Install Fire Suppression System.	\$308,188
<b>Total</b>	<b>\$464,552</b>
<b>Low Priority Items</b>	
Description	Estimated Cost
Exterior Masonry Repair Package including Re-Pointing & Cleaning.	\$91,661
Exterior Wood Repair Package including Repairs & Repainting.	\$183,322
Repair Steel Windows & Install Storms at (2) Steel Windows, Cupola Louvres & Attic Door. Provide Screens for all Windows & Replace Sealant around All Openings.	\$133,573
Replace Interior Wall Mounted Handrails with Compliant Handrails	\$4,588
Upgrade Interior Finishes including New Carpet, Painting, Refinishing Wood & Window Treatments. Devise Building Standard to Maintain Consistant Appearance Moving Forward.	\$206,222
<b>Total</b>	<b>\$619,366</b>

*Corporation Exhibit B.*

23. The Performance Services study states that LaCrosse consists of the high school building, with a brick exterior with a heavy timber wood frame roof, and a gymnasium, which includes a cafeteria and additional classroom space. The Performance Services study identifies several issues associated with LaCrosse’s aging infrastructure: an inefficient HVAC system; aging and obsolete electrical components; no handicap accessibility; deteriorating plaster walls, wood flooring and doors, and slate slab chalkboards; inadequate fixture placement in bathrooms; an exterior stairwell which is not up to code; a lack of a secure main entrance; and a load bearing wall system making it infeasible to renovate the building. The Performance Services study estimates a cost of approximately \$2,800,000 to \$3,600,000. *Corporation Exhibit C.*



24. The Performance Services study also estimates between \$2,300,000 and \$2,700,000 for an alternative renovation of Wanatah. The alternative renovations include six (6) new classrooms; an additional serving line and 500 square feet of cafeteria space; additional administrative office space and a secure entrance; upgraded mechanical systems; and interfacing the LaCrosse gymnasium HVAC system with Wanatah’s direct digital control system. *Corporation Exhibit C.*

25. The study by Dr. Robert Boyd (“Boyd Study”) states that “[e]nrollment projected on five (5) year rolling average of resident live births and three (3) year average continuation rate to 2024 indicates a 30 student or 7.7% increase in total student population.” The Boyd Study also states that since 2006 Tri-Township Schools has enrolled 2.22% of county resident live births in kindergarten five (5) years after birth, which reflects a decrease in kindergarten student enrollment from an average of 37 to 31 per year. *Corporation Exhibit D.*

26. The list of facility improvements from 2011 through 2018 is as follows:

	A	B	C	D	E	F	G	H
1	Date	Vendor	LaCrosse Expense	Amount		Vendor	Wanatah Expense	Amount
2	May 2010-Jan. 2011	Tonn & Blank	Gym restrooms, weight room, northeast entrance & doors, ADA restroom, East entrance door & sidewalk, Storage room added, Admin. Office ADA access, ADA parking spaces	551,370.99				
3	Sept.-Nov. 2011	Tonn & Blank	New stairs--west side of building	30,368.85			Blacktopping, storage bldg, wireless installed	
4	Nov. 2011	Tonn & Blank	New doors on classrooms	9,997.41				
5	Jan. 2012	Midnight Masonry	Block windows in gym	3,200.00				
6	Sept. 2012					Larson Danielson	Shower room project	29,832.00
7	Nov. 2012					Larson Danielson	Bathroom project	75,563.00
8	Nov. 2012	Vermillion Systems, Inc.	Cameras installed initially & then labor cost for moving them as offices changed, and adding more cameras	27,490.50				
9	Nov. 2013	B & G Sealcoating	Parking lot & stone on north side of building	15,960.00				
10	2014					Performance Services	Wanatah Building Project I have attached a breakdown of what I have submitted to Huntington to pay.	1,950,000.00
11	Summer 2015						LED Sign, curtains for stage	
12	Jun-15	Indiana Remodel	Bleachers redone	53,291.00				
13	Aug. 2015-Apr. 2016					Performance Services	Admin addition	1,157,156.90
14	Jul-17	Area Sheet Metal	Heating system & install in basement office	10,595.00				
15	Aug. 2018	Dick Bucher	Labor for basement office repairs	1,275.00				
16		Menards	New door for office in basement	269.88				

	A	B	C	D	E	F	G	H
17		Logan Keehn	Painting in basement office	950.00				
18		Ponce Home Improvement	Flooring installed in basement office	1,150.00				
19		Tara Walden/Tracy Bucher	Chairs bought for basement office	335.96				
20	May-18	Larry Miller Glass	New doors on gym entrance	8,360.00				
21	Jul-18	Trane	Gym vestibule heater	17,788.00				
22	Jul-18	Brian McMahan	Carpet squares for 5 classrooms	2,188.75				
23	Aug. 2018	Troxel Electric	Heater install in vestibule	1,585.99				
24		Area Sheet Metal	Heater install in vestibule	1,870.00				
25		Tital LED	Gym lighting & install	11,789.80				
26		Sharp School Services	New padding for gym	6,653.13				
27	Sept. 2018					Troxel Electric	Lighting project	55,696.50
28								
29								
30	Total			756,490.26				3,268,248.40
31								

*Corporation Exhibit I.* This list shows a series of projects at LaCrosse, the largest of which was undertaken in May & June 2011 to include renovations to the gymnasium and for compliance with the Americans with Disabilities Act. Projects at LaCrosse since then have been periodic repair or replacement at certain locations in the building. The right side of the sheet shows the previously mentioned renovations at Wanatah in 2014 and 2015.

27. The Department finds that since 2011 Tri-Township Schools has planned to consolidate its schools into Wanatah. This plan includes the relocation of the LaCrosse elementary school in 2015 by adding two (2) classrooms on Wanatah and the Proposed Relocation Project. This is the outcome of surveys done by Performance Services on the deteriorating conditions at LaCrosse, as well as concerns expressed by vendors, and Boyd Study. The Proposed Relocation Project is therefore intended to transfer high school students to Wanatah for academic purposes. Tri-Township Schools would then cease using LaCrosse for that purpose. The gymnasium and ballfields would continue to be used for extracurricular activities.

28. Tri-Township Schools has not provided a written plan that documents the timeline for the relocation of the high school to Wanatah. The Rawlins Group Presentation provided by Tri-Township Schools shows that the Proposed Relocation Project contains the following items:

- Addition:
- Five (5) Classrooms
  - Art, English, Math, Social Studies, 6<sup>th</sup> Grade English/Computers
  - Student Toilet Rooms
  - Speech Room
  - Intervention Room
  - Infrastructure Expansion/Connection
  - Cooling Plant, Heating Hot Water, Corridors, Storm Sewer, Sanitary Sewer, Electrical, Data & Communications, etc.
- Possible Other:
- H.S. Chemistry Lab Renovation
  - Office Remodeling
  - Student Parking
  - New Furnishings and Equipment

*Corporation Exhibits E & K.* The Proposed Relocation Project is composed at least of the renovations that fall into the “Addition” category. These comprise the Proposed Relocation Project. The renovations that fall into the “Possible Other” category, as the name suggests, are those that may or may not take place. These comprise the Possible Future Project. The Rawlins Group Presentation also listed the following costs:

Design-Build Budget:	Survey, Geotechnical Engineering Design and Permitting Construction and Close-out	\$2,484,000
Owner’s Soft Costs:	Contingency Design-Build Criteria Loose Equipment & Miscellaneous	\$100,000
Financing Costs	Cost of Issuance Legal, etc.	\$136,000

*Corporation Exhibit E & K.*

29. Tri-Township Schools’ strategic plan is presented as a powerpoint. It identifies physical, budgetary, and programming concerns for LaCrosse from the perspective of Mr. Shepherd. The physical concerns include HVAC, electricity, plumbing, and structural problems like those included the studies from Ratio Assessments and Performance Services. The strategic plan states that budgetary concerns include increasing maintenance costs and declining enrollment due to falling live births and transfers to other schools. It then states that programming concerns involve physical limitations and staff redundancies, as well as small enrollment, affecting curricular and extracurricular programs. The strategic plan states that to address these concerns, “the best course of action for Tri-Township is to move our high school to Wanatah as opposed to sinking funds into an aging structure.” *Corporation Exhibit A.*

### ANALYSIS

30. The Petitioners’ arguments follow these general themes:

- The past and future capital projects performed by Tri-Township Schools were all done with the underlying goal of relocating LaCrosse and therefore cannot be viewed as separate from the Proposed Relocation Project.
- Future projects are necessary because the scope of the Proposed Relocation Project will not adequately serve the functions of a high school.
- Tri-Township Schools intentionally underestimated the Proposed Relocation Project costs and improperly excluded interest to avoid the controlled project threshold.

31. Indiana Code 6-1.1-20-3.1(c) & 3.6(j) state that a controlled project is artificially divided when the result of one (1) or more of the subprojects cannot reasonably be considered an independently desirable end in itself without reference to another capital project. This a fact-sensitive inquiry. The Department makes its determinations on a case-by-case basis in reliance on the applicable law and facts.

32. The “Independently Desirable End Test,” as it were, prescribed by IC 6-1.1-20-3.1(c) & 3.6(j) requires the Department to evaluate whether the result of the Proposed Relocation Project “can reasonably be considered an independently desirable end in itself” without reference to the Possible Future Projects.

*Underlying Goal of the Proposed Relocation Project and Other Corporation Projects*

33. The result of the Proposed Relocation Project is the accommodation of the high students currently at LaCrosse for academic purposes. Wanatah would be renovated to include additional classrooms, remodeled bathrooms, and infrastructure repair. Tri-Township Schools claimed several benefits from this relocation in terms of its budget, enrollment, and programming. This decision came from a recommendation by Mr. Shepherd following nine (9) years of deliberation and study, including third-party studies on the condition of LaCrosse done in 2015 and a demographic study of Tri-Township Schools done in 2018.

34. The test under IC 6-1.1-20-3.1(c) & 3.6(j) evaluates whether the result of the project can be achieved without reference to another capital project.<sup>4</sup> The Petitioners argue that the Proposed Relocation Project plus the Possible Future Projects will yield the result that is the bare minimum necessary to provide an education to students at Wanatah. What infrastructure is the bare minimum necessary to ensure an education is beyond the Department’s purview. The Department will determine whether the accommodation of high school students can occur as a result of the Proposed Relocation Project without reference to the Possible Future Projects.

*Scope of the Proposed Relocation Project*

35. Tri-Township Schools claimed that it has coordinated rearranging the cafeteria space to ensure that, in light of low enrollment, renovations previously recommended by Performance Services is unnecessary. In addition, renovations to the gymnasium, the access road, and the administrative office are not necessary, and that other classrooms are not necessary if the enrollment trends shown in the Boyd Study hold true. The Department defers to the Corporation’s judgment to take alternative approaches in lieu of certain recommendations for Performance Services or the Rawlins Group. The Corporation has relied on experts to evaluate needed capital improvements. The School Board and Mr. Shepherd, as policymakers for the Corporation, may forego taking certain recommended actions if they believe alternatives can achieve the same end.

36. It is not necessarily a sign of artificial division that smaller various projects were performed at LaCrosse and Wanatah while the school officials were evaluating the necessity of ultimately

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<sup>4</sup> The Department hesitates to adopt the Corporation’s interpretation of IC 6-1.1-20-3.1(c) & 3.6(j) that a project is not artificially divided when it “can stand alone and have value, in itself, irrespective of any past or future project.” This interpretation, without further qualification, can make any project, regardless of size or scope, an independent project. For example, replacing the doors to the main entrance has value insofar as it improves access to the building. Likewise, repairing the HVAC system has a value insofar as it improves the climate inside the building. Both can be said to give benefit to the inhabitability of the building, just as much as each can be said to yield their individual benefits independent of the other. Due to the vagueness of describing how a project “has value,” the Department will prefer to regard whether the result of a proposed project is reasonably considered to be independently desirable without reference to another capital project.

relocating the high school. Routine maintenance and repair at school facilities or renovations, especially those recommended by third-party evaluators, should be expected over time as the school corporation continues to operate. The 2014 Project was in response to concerns about school safety and needs at Wanatah independent of what would be done to LaCrosse. Likewise, the 2015 Project also addressed similar concerns about safety based on estimates of needs from the Rawlins Group. The relocated high school students and staff will certainly benefit from the results of these projects. However, their ends were achieved whether or not the relocation of LaCrosse takes place. Similarly, the Corporation demonstrated that its decision to relocate LaCrosse students and staff was based on deteriorating conditions at the LaCrosse building. While that decision was being deliberated, doors and windows needed to be replaced, walls repainted, the HVAC system maintained, and other projects occurred so that LaCrosse and Wanatah can continue to be used. Therefore, the Department declines to find that the purposes of the projects performed from 2011 through 2018 at the school facilities are in reference to the purpose of the Proposed Relocation Project.

#### *Alleged Manipulation of Project Costs*

37. The Petitioners point to statements made by school officials and financial advisors that the Corporation is keeping the estimated costs below the controlled projects threshold. These alleged statements supposedly serve as evidence of artificial division because they suggest the Corporation is keeping the scope of the Proposed Relocation Project smaller than what is actually necessary. The Corporation's Response counters this first by claiming the controlled project threshold is actually larger than the estimated costs of the project, and then second by claiming the scope of the Proposed Relocation Project is adequate.

38. The Department is doubtful that the certification of the gross assessed value by the county auditor on October 2 shows the Corporation was aware of the headroom it had when planning the scope of the project. The Rawlins Group presentation was made public on November 19, however that does not mean that the presentation was made in reliance on the auditor's certification. At the same time, the Petitioners can only provide hearsay of what has been said by the school officials and Stifel.<sup>5</sup> Even if these statements were made, as previously stated the Department believes they are only relevant if they bear on the scope of the Proposed Relocation Project. The Department has already addressed this issue above. Similarly, the claim that Tri-Township Schools improperly excluded interest payments from its proposed cost is not related to whether the Proposed Relocation Project has an independently desirable end in and of itself without reference to another capital project.

39. The Petitioners point to publicly made statements and public presentations indicating the Corporation intends future projects or increased costs.<sup>6</sup> This is not corroborated from either the

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<sup>5</sup> The statement by James Elizondo from Stifel that he was told to use the controlled project threshold for calculating the tax impact, if true, does not show that the Corporation was trying to manipulate the cost estimate, although it does show the Corporation believed the controlled project threshold was based on a gross assessed value closer to what the Petitioners claim it to be.

<sup>6</sup> The Rosenkranz Petitions claimed that school officials made private comments about a plan to expand athletic facilities and programming opportunities. The presentations from the Tri-Township Schools confirm that its officials plan to expand programming opportunities through relocating LaCrosse students to Wanatah. No such public

Petitioners or the Corporation, and Tri-Township Schools does not appear to deny that such future projects or costs are possible. Even if costs went up after the project starts, the Department believes that this is not relevant to the question of whether the project itself has an independently desirable end in itself without reference to another capital project. Moreover, the Response indicates that, were there surplus bond proceeds from the initial \$2,723,000 issuance, one or more of the Possible Future Projects might be done. This shows that the Corporation intends to control the costs of renovating Wanatah below what is stated in the 1028 Resolution and represented to the public.

40. As for the claim that Tri-Township Schools has deliberately kept the costs below the controlled project threshold, on its face this might show an attempt at artificially dividing the Proposed Relocation Project and Possible Future Projects. The Department accepts Tri-Township Schools' Response indicating that it has made attempts to limit the Proposed Relocation Project to those components which it has determined are necessary to achieve its goal of relocating LaCrosse students and staff to Wanatah. The need for the Possible Future Projects has been diminished as the Corporation has rearranged Wanatah cafeteria and determined that the other improvements are not necessary to attain this goal. The Department will not second guess the judgment of the School Board that the Possible Future Projects are not necessary to relocate the LaCrosse students.

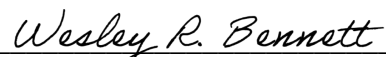
#### **FINAL DETERMINATION**

41. Therefore, the Department finds that the result of the Proposed Relocation Project, the relocation of LaCrosse student and staff to Wanatah, is reasonably considered to have an independently desirable end in and of itself without reference to any other capital project either previously performed by the Corporation, deemed possible by the Corporation, or anticipated by the Petitioners.

42. Therefore, pursuant to IC 6-1.1-20-3.1(c) & 3.6(j) and in light of the foregoing, the Department finds that Tri-Township Schools has not artificially divided the Proposed Relocation Project to avoid the petition and remonstrance or referendum process under IC 6-1.1-20.

Dated this 28th day of December, 2020.

STATE OF INDIANA  
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

  
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**Wesley R. Bennett, Commissioner**

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statement was made with regard to the athletic fields. The Department can therefore neither confirm nor deny that what the school officials allegedly made in private would manifest itself as a capital project in the future.