

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

IN THE MATTER OF THE PETITION)
FOR REVIEW ALLEGING ARTIFICIAL)
DIVISION OF A CONTROLLED) **CP016-001**
PROJECT BY GREATER CLARK)
COUNTY SCHOOLS)

FINAL DETERMINATION

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 makes 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 \$2,000,000 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.
4. A school corporation is a political subdivision. IC 6-1.1-1-12.

RELEVANT PROCEDURAL HISTORY

5. On April 5, 2016, Greater Clark County Schools (“Corporation”) adopted a Resolution Approving Form of the Second Amendment to Lease, whereby the Corporation made a preliminary determination to enter into a second amendment to lease agreement with the Greater Clark Building Corporation to provide financing for the renovation of and improvement to a number of its schools,

including Northaven Elementary (“Northaven”), Charlestown Middle School (“Charlestown”), and River Valley Middle School (“River Valley”). *Petition, p. 14; E-mail from Thomas Peterson, the Corporation’s bond counsel, to Michael Duffy, General Counsel for the Department, April 8, 2016, 4:10 PM EDT.* In its Resolution, the Corporation “declares its official intent to construct and equip the Projects with the proceeds of debt incurred . . . in an aggregate amount not to exceed \$14,195,000 for the purpose of paying or reimbursing costs of the Projects.” *Petition, p. 15.*

6. On April 11, 2016, Alice Butler, who owns property within the jurisdiction of the Corporation, submitted a petition (“Petition”) to the Department alleging, among other things, that the Corporation is pursuing three projects at Northaven, Charlestown, and River Valley to eliminate “open concept” layouts at each school, that each project costs in excess of \$2,000,000 in total, and that the Corporation plans to break each project up over a period of years with multiple bond issues under \$2,000,001 to avoid the petition and remonstrance process in violation of the law. *Petition, pp. 2, 3–4.*

7. On April 11, 2016, the Department contacted the Corporation, asking it to respond to the contentions made in the Petition within ten business days. *E-mail from Michael Duffy to Dr. Andrew Melin, Corporation Superintendent, April 11, 2016, 11:50 AM EDT.*

8. On April 12, 2016, Ms. Butler supplemented her Petition by submitting to the Department a spreadsheet documenting schools that issued bonds following failed controlled project referenda. *E-mail from Alice Butler to Michael Duffy, April 12, 2016, 8:57 PM EDT.* Ms. Butler asserts that:

[Thirteen] school districts issued General Obligation bonds AFTER the date their referendum failed ranging from \$485,000 to \$4,000,000. The greatest amount of these bonds (\$4,000,000) was issued by Madison Consolidated Schools. Not a single school district that had a failed referendum proceeded to issue General Obligation Bonds for a large portion of the amount they had proposed — except for Greater Clark.

Greater Clark County Schools wants to issue \$14.2 million in General Obligation Bonds this year. Then, according to their Facility Plan which I sent to you, they propose another \$17 million in 2017 and \$30+ million in 2018–20. A total of approximately \$65 million in bonds WITHOUT a referendum. This is just not right and I don’t feel that this was what the legislature intended.

E-mail from Alice Butler to Michael Duffy, April 12, 2016, 8:57 PM EDT.

(The Department notes that the Corporation’s November, 2015 controlled project referendum for \$109,200,000 failed. *Statements of the Circuit Court Clerk for State of Indiana (CEB-25): County of Clark, November 16, 2015.*)

9. On April 21, 2016, the Corporation submitted its response (“Response”) to the Petition to the Department. *Response Cover Letter.*

10. On April 22, 2016, the Department requested from the Corporation any documentation concerning project costs for Northaven, Charlestown, and River Valley for future years. *E-mail from Michael Duffy to Renee’ Markoski, Executive Assistant to the Superintendent, April 22, 2016, 10:54 AM EDT.* Later that day, the Corporation responded with a five-year facility plan for Northaven, Charlestown, and River Valley. *E-mail from Dr. Andrew Melin to Michael Duffy, April 22, 2016, 4:31 PM EDT.*

FINDINGS OF FACT

11. The Petition includes a document entitled "Agenda Item Details," which concerns a "Special Meeting" on December 15, 2015. The document provides that "The Superintendent recommends approval of the Facility Plan which is a five-year plan with a commitment made on an annual basis." Moreover, "This Facility Plan is a guiding document which will give Grater Clark direction, especially for bond funding early in 2016. The Facility Plan is a five-year plan with a commitment made on an annual basis as well as an annual review in the fall of each year for the following year." *Petition, p. 5.*

12. The Petition also includes a document entitled "Summary of Potential Projects: 2016–2020," which reflects entries of \$2,000,000, \$2,000,000, and \$1,699,000 for Northaven for 2016, 2017, and 2018–2020, respectively; \$2,037,500, \$2,070,000, and \$8,366,988 for Charlestown for 2016, 2017, and 2018–2020, respectively; and \$2,032,000, \$1,920,000, and \$8,225,450 for River Valley for 2016, 2017, and 2018–2020, respectively. *Petition, p. 6.* The Petition also includes a document entitled "Summary of Potential Bond Issues: 2016–2020," which reflects entries of \$2,000,000, \$2,000,000, and \$1,685,000 for Northaven for 2016, 2017, and 2018–2020, respectively; \$1,900,000, \$2,070,000, and \$8,366,988 for Charlestown for 2016, 2017, and 2018–2020, respectively; and \$1,952,000, \$1,870,000, and \$8,225,450 for River Valley for 2016, 2017, and 2018–2020, respectively. *Petition, p. 7.*

13. The Petition also includes a document entitled "Agenda Item Details," which concerns a "Regular Meeting" on April 5, 2016. The document provides that "The Superintendent recommends the approval of the 1028 Resolution . . . for the Lease Financing." The document cites "A Bond Issue in the approximate amount of \$14,195,000, to undertake thirteen (13) proposed renovation projects" at a number of schools, including Northaven, Charlestown, and River Valley. The funds "will be provided by a bond issue by the Greater Clark Building Corporation," with an estimated tax impact of \$0.04, "payable for 20 years starting in 2017." *Petition, p. 9.*

14. The Petition also includes a document entitled "Northaven Elementary," which details "Improvements Needed," including "Eliminate Open Concept," for which dollar amounts of \$2,000,000, \$2,000,000, and \$1,000,000 are listed for 2016, 2017, and 2018–2020, respectively. *Petition, p. 17.* The Petition includes similar documents for Charlestown and River Valley, which indicate "Eliminate Open Concept" figures of \$1,800,000, \$2,000,000, and \$2,000,000 for Charlestown for 2016, 2017, and 2018–2020, respectively, and \$1,000,000, \$1,800,000, and \$2,000,000 for River Valley for 2016, 2017, and 2018–2020, respectively. *Petition, pp. 18, 19.*

15. The Corporation contends that the 13 projects that are the subject of the Petition "are all uncontrolled projects, located at separate buildings, bid separately and designed to be complete and functional with no additional expense than those set forth at the 1028 Hearing on April 5, 2016," and that "Recognizing that there is savings to be realized by grouping uncontrolled projects into one financing, a lease was approved that will finance all thirteen 2016 uncontrolled projects with one bond issue." *Response Memo, p. 1.* Moreover,

[i]n 2015, the school board adopted a Facility Plan to identify renovations and improvements that are needed to the school buildings. The Facility Plan prioritizes work that is needed now and potential work that can be delayed until later years. It is anticipated that needs and priorities will shift and there is no guarantee that work identified for future years will be undertaken or, if selected, when it will be done. The

school board will reevaluate the Facility Plan on an annual basis, reevaluate the timeliness of the need, as well as the financial impact of undertaking such work.

Response Memo, p. 1.

16. The Corporation asserts that:

The petition states that the Facility Plan identifies eliminating the open concept at Northaven Elementary School, River Valley Middle School and Charlestown Middle School in multiple years. While the petitioner would like you to see all three years as one project, the 2016 Projects and any of the tentative future projects are distinct renovation undertakings; furthermore, due to the desire to keep the school buildings open for operation during the renovations, it would not be reasonable to undertake the tentative projects at the same time as the 2016 Projects.

Response Memo, p. 1.

17. The Corporation states that the 2016 projects at Northaven, Charlestown, and River Valley first includes upgrades to the buildings' central HVAC plant, and that most or all of the mechanical systems are "original to the building, at the end of their usable life, and require replacement in order to serve the enclosed areas of renovations throughout the building," and that this equipment "will be upgraded to new, modern, and energy efficient systems which are capable of serving the building renovation as well as providing for the environment required of today's indoor air quality and energy conservation codes." *Response Memo, pp. 1-2.* The 2016 Northaven project also includes "elimination of the open concept of classrooms throughout, by constructing enclosing walls at the corridors and renovation of the classrooms within." *Response Memo, p. 2.* The 2016 Charlestown and River Valley projects "includes the creation of a new enclosed media center and secure entrance to the building" and "creation of new enclosed classrooms in the area of the existing library," which will "provide for secure spaces by constructing enclosing walls at the corridors and renovation of the classroom areas within." *Response Memo, p. 2.*

18. Finally, the Corporation asserts that "No 2016 project has been artificially determined [*sic*], but has been designed to be complete and functional for the benefit of our students without any further work. Every year the school board will review and update the Facility Plan. The school board and administration of the Greater Clark County Schools believe that maintaining, annually updating and following the Facility Plan will address these renovation needs in an orderly and financially prudent manner." *Response Memo, p. 2.*

19. The Corporation's Response also includes floor plans for the renovations at each school and a document entitled "Project Scope & Cost Opinion and Budgetary Figures: 2016 Renovations" ("Opinion") for each school. The Opinion for Northaven breaks the "Work Scope" into "HVAC Central Plant Upgrades" at \$445,000 and "Enclose Open Concept Classrooms" at \$1,210,450, with "Total Project Costs (Construction Costs + Soft Costs)" of \$1,985,450. *Opinion for Northaven Elementary School.* The Opinion for Charlestown breaks the "Work Scope" into "HVAC Central Plant Upgrades" at \$530,000, "New Media Center Area" at \$369,284, and "Convert Library Area to Classrooms" at \$626,080, with "Total Project Costs (Construction Costs + Soft Costs)" of \$1,855,364. *Opinion for Charlestown Middle School.* The Opinion for River Valley breaks the "Work Scope" into "HVAC Central Plant Upgrades" at \$530,000, "New Media Center Area" at \$431,975, and "Convert Library Area to Classrooms" at \$701,330, with "Total Project Costs (Construction Costs + Soft Costs)" of \$1,993,305. *Opinion for River Valley Middle School.*

20. The Corporation's five-year facility plan documents the following, in part:

Northaven Elementary				Charlestown Middle School				River Valley Middle School			
IMPROVEMENTS NEEDED	2016	2017	2018-2020	IMPROVEMENTS NEEDED	2016	2017	2018-2020	IMPROVEMENTS NEEDED	2016	2017	2018-2020
1. Eliminate Open Concept	\$ 1,395,000	\$ 1,830,000		1. Eliminate Open Concept	\$ 1,630,000	\$ 1,830,000	\$ 1,830,000	1. Eliminate Open Concept	\$ 830,000	\$ 1,630,000	\$ 1,830,000
		(Separate section of building from 2016 Project)				(Separate section of building from 2016 Project)				(Separate section of building from 2016 Project)	
Architect Fees	\$ 170,000	\$ 170,000					(Separate section of building from 2016 and 2017 Projects)				section of building from 2016 and 2017 Projects)
2. Upgrade HVAC System	\$ 400,000			Architect Fees	\$ 170,000	\$ 170,000	\$ 170,000	Architect Fees	\$ 170,000	\$ 170,000	\$ 170,000
3. HVAC Control Upgrade	\$ 35,000			3. Ultra Violet Pool Filter			\$ 30,000	2. Resurface Track	\$ 10,000		
4. Relocate Office Area to Front of Building & renovate existing offices			\$ 2,000,000	4. Roofs			\$ 615,000	3. Ultra Violet Pool Filter	\$ 30,000		
5. New Kitchen & Serving Line			\$ 2,000,000	5. Renovate Pool Mechanical System	\$ 17,500			4. Roofs	\$ 100,000		
6. New Intercom System			\$ 14,000	6. New HVAC Controls	\$ 70,000			5. Purchase Whole Property	\$ 400,000		
7. VOIP Phone System			\$ 50,000	7. Cooling Tower and Piping Replacement	\$ 350,000			6. New HVAC Controls	\$ 70,000		
8. Add Additional Classrooms			\$ 2,000,000	8. Install New Flooring in Cafeteria	\$ 80,000			7. Cooling Tower and Piping Replacement	\$ 350,000		
9. Add Additional Classrooms			\$ 2,000,000	9. Two (2) mini buses	\$ 100,000			8. Clear Pond Area and Resurface	\$ 40,000		
Totals	\$ 2,000,000	\$ 2,000,000	\$ 8,064,000	10. Geothermal Retrofit			\$ 5,401,988	9. Tennis Court Resurfacing		\$ 50,000	
				11. VOIP Phone System		\$ 75,000		10. Two (2) Mini Buses		\$ 100,000	
				Totals	\$ 2,417,500	\$ 2,075,000	\$ 8,046,988	11. Geothermal Retrofit			\$ 6,225,450
								12. VOIP Phone System		\$ 75,000	
								Total	\$ 2,000,000	\$ 2,025,000	\$ 8,225,450

Corporation's Five-Year Facility Plan.

ANALYSIS

21. The Department is unpersuaded by the Corporation's assertion that "No 2016 project has been artificially determined [*sic*], but has been designed to be complete and functional for the benefit of our students without any further work." It is clear from the Corporation's statements and publications (see *Petition*, pp. 18, 19; *Response Memo*, pp. 1-2; and *Corporation's Five-Year Facility Plan*) that the proposed HVAC central plant upgrades, enclosure of open concept classrooms, and conversion of library area to classrooms are components of the overarching project of enclosing the open concepts at Northaven, Charlestown, and River Valley. The Corporation acknowledges that the HVAC work is needed "in order to serve the enclosed areas of renovations throughout the building," that work at Northaven involves "elimination of the open concept of classrooms throughout," and that work at River Valley and Charlestown includes the "creation of a new enclosed media center and secure entrance to the building" and "creation of new enclosed classrooms in the area of the existing library," which will "provide for secure spaces by constructing enclosing walls at the corridors and renovation of the classroom areas within." The Corporation's publications of "Improvements Needed" (see *Petition*, pp. 18, 19), suggest on their face that the "Eliminate Open Concept" improvement spans multiple years, a representation affirmed by the Corporation's five-year facility plan. In sum, the Corporation's statements and publications taken together lead the Department to conclude that the Corporation plans to effect a project at each of three of its schools to enclose an open concept by performing work in stages over a period of years.

22. The fact that each phase or component of the overarching project can be completed independently of the other phases or components or that each phase or component is self-contained

does not mean that the phases or components are distinct projects. By way of example, an entity seeking to install central heating and air conditioning at an older shell building would no doubt have to replace the building's windows, then install insulation in the building's walls and attic, and then install ductwork, the furnace, and compressor. To say that the window replacement, insulation work, and installation work are three distinct projects would be disingenuous. In reality, the window replacement, insulation work, and installation work are the three phases to completing the overarching project of installing central heating and air conditioning at the building. In sum, the Department views the Corporation's HVAC work, enclosure and creation of classrooms, and corresponding renovations as phases or components of the overarching project of enclosing an open concept at three of the Corporation's schools.

23. Indiana Code 6-1.1-3.1(c) is clear that "A political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements" of IC 6-1.1-3.1 or 3.2 (the petition and remonstrance process) and that if the Department receives a petition, it must "make a final determination on the issue of whether the capital projects were artificially divided." Proceeding on the basis that each phase of the Corporation's work cited in Paragraph 19 is part of a single project at each school, the Department must now consider whether a controlled project has been artificially divided.

24. The Corporation's five-year facility plan is revealing. It makes clear that at Northaven, the open concept enclosure spans two years. Likewise, the open concept enclosure at Charlestown and River Valley spans four years. Although the facility plan indicates that the enclosure is taking place in a "separate section" of each school building in subsequent years, the facility plan reinforces the fact that the enclosure at each school is a single project being accomplished in phases or sections. The two-year enclosure at Northaven appears to total \$3,225,000 (discounting architect fees and HVAC work). The four-year enclosures at Charlestown and River Valley appear to total \$5,290,000 and \$4,290,000, respectively (again discounting architect fees and HVAC work). Thus, each enclosure totals an amount in excess of \$2,000,000, making each enclosure a controlled project.

FINAL DETERMINATION

25. The Department, in reliance on the law and facts documented herein, concludes that the Corporation has artificially divided a controlled project at Northaven, a controlled project at Charlestown, and a controlled project at River Valley by splitting each controlled project into parts over a period of two or more years so that each part does not exceed \$2,000,000. The fact that each project can be completed in self-contained stages or phases at different times does not change the fact that the phases or stages are components of a single project—the enclosure of an open concept at each school. Although the Department has no objection to the enclosure of each school constituting its own project, the Department does object to the treatment of each component of each project as its own project.

26. Based on the Corporation's five-year facility plan, the cost of each enclosure controlled project exceeds \$2,000,000 but does not exceed \$10,000,000, meaning that each enclosure controlled project should be subject to the petition and remonstrance process.

27. In sum, and pursuant to IC 6-1.1-20-3.1(c)'s requirement that the Department, "not later than thirty (30) days after receiving [a] petition[,] make a final determination on the issue of whether the capital projects were artificially divided," the Department's final determination is that the

Corporation has artificially divided a controlled project at Northaven, a controlled project at Charlestown, and a controlled project at River Valley to avoid the petition and remonstrance process under that statute.

Dated this 5th day of May, 2016.

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

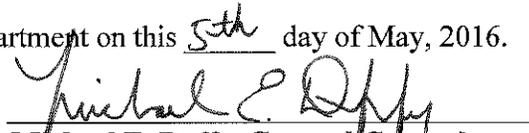


Courtney L. Schaafsma, Commissioner

STATE OF INDIANA
DEPARTMENT OF LOCAL GOVERNMENT FINANCE

I, Michael E. Duffy, General Counsel for the Department of Local Government Finance, hereby certify that the above is an order of the Commissioner of the Department of Local Government Finance made this date in the above-entitled matter and that the Commissioner has personally signed the same under her statutory authority.

WITNESS MY HAND AND SEAL of this Department on this 5th day of May, 2016.



Michael E. Duffy, General Counsel