

## CLARK-PLEASANT CASE IN BRIEF

In the past five months, attorneys for the school district and state have filed dozens of documents to the court outlining their arguments over the denial of the \$60 million school building project. The attorneys on both sides have filed briefs, which lay out the arguments for the judge, and also have filed responses to the briefs.

The state believes the case should be dropped because it lacks standing and new property tax reform laws make it moot. The school district believes the state official erred in her decision, which should be reversed.

Here is a look at the state and school district's arguments:

### New laws

One core argument in the case is how new property tax reform laws affect the project. Now that new laws remove the Indiana Department of Local Government Finance from the approval process, Clark-Pleasant's case is a moot point, the state says. But the school district's attorneys argue that new laws wouldn't apply to the \$60 million project because it was developed under old laws and the new laws apply

only to projects approved after June 30. The new laws also don't provide any language for how to deal with projects under old law retroactively, school attorneys say.

The state also says that new laws give taxpayers a decisive and democratic way to resolve the project through a referendum. Plus, the referendum lets taxpayers vote who couldn't voice their opinion on the \$60 million project during the petition drive, called a remonstrance race. In a remonstrance, only owners of real estate in the school district can vote on a project, but a referendum lets all registered voters in the district participate.

### Who can appeal?

State attorneys don't believe the school district should be allowed to appeal state official Cheryl Musgrave's decision to nix the project because state laws say that local governments, such as school districts, can't sue the state for taxes. Only taxpayers can appeal to the tax court, state attorneys say. But school district attorneys also point to state law that says a school district does have the right to appeal the state's deci-

sion in the tax court.

Attorneys from both sides have argued over the interpretation of Indiana laws regarding if and how school districts and taxpayers can appeal to the tax court.

For example, school attorneys argue that although the law that gave school districts the ability to appeal the state's decision in tax court was amended in 2006, the intent of the law to allow school districts to appeal never changed. And state attorneys point to a 1974 ruling that details that a local government can't sue the state for taxes.

### Following the guidelines

The school district contends that school officials followed and met the state guidelines for approving a building project.

According to law, the state must consider square footage of school building space per student, enrollment patterns, age and condition of current facilities, cost per square foot of the construction, the effect of the project on the tax rate and any other pertinent matter.

School attorneys believe the school district met the guidelines and the

state showed an abuse of discretion in nixing the plans.

For example, school attorneys said the state ignored the fact that the square-footage space per student was under state guidelines.

Also, when comparing Clark-Pleasant's middle school project to other middle school projects in Indiana, the state improperly compared the project to others of smaller size to show it cost more, school attorneys say. The four middle schools given as an example were built for less square footage and exceeded the state's guidelines for cost per square foot of \$188.76, school attorneys say.

The state argues that the current buildings were in good condition but offered no recommendation on how to put more students in the buildings without constructing a new school. The finding was "nonsensical" and used as a check on overly aggressive building, which isn't the school district's situation, school attorneys said.

The state can use "any other pertinent matter" in its ruling, according to state law.

But the state should not have used an

opposition group's disagreement with the plans as a reason for denial, school attorneys say.

The state wanted the school district to appease the group even though the district had followed every requirement to solicit public input on building projects, including public meetings on building and enrollment issues, telephone surveys, public forums, state-required public hearings and a public petition remonstrance in the spring of 2007.

But state attorneys say that Musgrave is not required to assign greater weight to any of the requirements, does not have to consider any single factor in making a decision, only has to consider each of the listed factors and doesn't have to base the ultimate decision on them, according to law. The state has to indicate only that the requirements for approval were considered in its final determination, state attorneys say.

The state also contends that Musgrave addressed every requirement in her denial, such as pointing out the school district's high tax rate and declining enrollment patterns coupled with a slow housing market and dwindling economy.

State attorneys also argue that some taxpayers' concerns over the project are a "pertinent" matter, which the state has to take into consideration.

### Other points

- School attorneys also disagree with the ruling because Musgrave ignored the Property Tax Control Board's 5-4 approval of the \$60 million project in November.

- The state also argues other reasons why the case is moot, such as the unusualness of the case.

- The school district's case is unusual to the tax court, and the facts in the case won't be used again, the state argues.

- The tax court was set up to typically settle disputes over property assessments or efforts to exact from taxpayers a sales tax, income tax or another tax revenue.

- This case also will affect only Clark-Pleasant and isn't the type of case the tax court was set up for.

- Therefore, a ruling for the school district or state will have no value for other school districts, the state or voters.

## AT A GLANCE: Clark-Pleasant's rebuilding plan

The Clark-Pleasant school district wants to build a middle school and renovate and expand the existing middle school and high school. The Indiana Department of Local Government Finance denied the plan on April 8, and the school district appealed Commissioner Cheryl Musgrave's decision. Now the fate of the project will be decided by Judge Thomas Fisher in the Indiana Tax Court.

### The court date

**What:** Today, attorneys for Clark-Pleasant Community School Corp. will argue that a state official's decision to deny a \$60 million plan to build a new middle school and renovate other buildings was unjustified.

Attorneys representing the state agency that denied the project want the case dropped.

**Where:** Room 413, Statehouse, Capitol and Washington streets in downtown Indianapolis

**When:** 1:30 p.m.

**Can the public attend?** Yes

**How it will work:** The attorneys for both sides will make their oral arguments to Judge Thomas Fisher. No one will be cross-examined, and there will be no jury. Attorneys will have about 45 minutes of speaking time each.

**What the judge will decide:** Fisher

will decide if the Indiana Department of Local Government Finance's decision to deny Clark-Pleasant's \$60 million project should be upheld or overruled. The judge will use court documents filed over the summer and oral arguments from the school district's and state's attorneys to make his decision.

### The players

#### Clark-Pleasant Community School Corp.

The school district wants to build a 1,600-student middle school for \$54 million to deal with predicted growth. Parts of school officials' plans also include expanding and renovating the existing middle and high schools for \$3 million each, equaling a total project worth \$60 million. The existing middle school would be converted to a ninth-grade center and the high school would be renovated.

#### Bose McKinney & Evans

The Indianapolis-based law firm will represent the school district in court. Attorneys have been working the case for about five months and received about \$50,000 from the school district so far, said Steve Sonntag, director of business and finance.

#### Indiana Department of Local Government Finance

The state agency is responsible for ensuring property tax assessments and

local government budgeting are carried out in accordance with state law. The department is charged with publishing property tax assessment rules and annually reviewing and approving the tax rates and levies of every political subdivision in the state, including all counties, cities, towns, townships, school corporations, libraries, and other entities with tax levy authority, according to its Web site.

Musgrave was appointed commissioner by Gov. Mitch Daniels more than a year ago. Since new property tax laws took effect July 1, the agency no longer is the final authority of school building projects, but taxpayers are in a public referendum.

#### Indiana Attorney General's Office

John Snethen from the attorney general's office will represent the Indiana Department of Local Government Finance in court.

#### The lobbying groups

Three groups have filed documents with the court to lobby for the school district's or state's case, called a friend of the court brief. The filings are made by groups or individuals who are not directly involved in the litigation but believe the court's decision may affect their interests.

**The Coalition of Growing and Suburban Schools:** Attorneys for the

group filed documents on July 7 with the court to lobby for the school district's case. About 25 Indiana school districts are members of the group, which acts as an advocate for larger and growing school districts to state legislators.

**Indiana Association of Public School Superintendents:** The statewide school group lobbied for the Clark-Pleasant school district by filing a friend of the court document Aug. 4. Clark-Pleasant Superintendent J.T. Coopman is the president-elect of the association, according to its Web site.

**Clark-Pleasant Taxpayers:** An anonymous group filed a document on Aug. 11 asking the judge to side with the state agency's decision to deny the \$60 million plan. In the document, the group said its members included taxpayers, parents of students, people who served on the school district's task force developed to study building projects and members of a group opposed to the building project. But the document doesn't give any more details or evidence of the number of people responsible or their involvement.

#### What the department said

In its April 8 ruling, Musgrave denied Clark-Pleasant's \$60 million project for the following reasons:

- The school district has the 13th

highest tax rate out of 326 schools in Indiana.

- The district's assessed valuation of \$1.16 billion at the time is comparable to Franklin's and Greenwood's, but those districts' total tax rate and debt service tax rate are significantly less than Clark-Pleasant's.

- School officials' argument that the tax impact would be minimal because of an increase in assessed valuation and because old debt would be replaced by new debt was not persuasive.

- Clark-Pleasant is the only school district in the county with a tax rate of more than \$2 and is 29 cents higher than the Franklin school district's tax rate of \$1.84, which is the second-highest in the county.

- In 2005, school officials predicted that as many as 8,800 new housing units would be built over the next decade in the district. But that prediction has been scaled back to 4,600.

- The school district did not modify any part of the project to address taxpayer concerns raised during the remonstrance process.

- Enrollment increased by 370 students in the fall, which was down from 500 students per year in the previous two years. Growth was projected to remain constant over the next 10 years at 350-400 students.

- School officials did not accept the plans formed by a community task force.

- Musgrave met with administrators and a group opposing the project during her decision on what she called a controversial project. She asked for the administrators and opponents to meet and reach a resolution on the project, but the school board and superintendent both said no.

### How the department rules

Here is what the Indiana Department of Local Government Finance must consider before ruling on a school building project.

- Fisher will decide if the department's decision should be upheld or reversed:

- The current and proposed square footage of school building space per student

- Enrollment patterns within the school corporation

- The age and condition of the current school facilities

- The cost per square foot of the school building construction project

- The effect that completion of the school building construction project would have on the school corporation's tax rate

- Any other pertinent matter

SOURCE: Indiana Code 20-46-7