

ORIGINAL

IN THE
INDIANA TAX COURT

Case No. 49T10-0805-TA-37



CLARK-PLEASANT COMMUNITY
SCHOOL CORPORATION,
JOHNSON COUNTY
Petitioner,

v.

STATE OF INDIANA, DEPARTMENT
OF LOCAL GOVERNMENT FINANCE
Respondent.

On Appeal from the
Department of Local
Government Finance

Petition No. 07-055

**VERIFIED PETITION FOR JUDICIAL REVIEW
OF A FINAL DETERMINATION OF
THE INDIANA DEPARTMENT OF LOCAL GOVERNMENT FINANCE**

The Pctitioner, Clark-Pleasant School Corporation, Johnson County (hereinafter "Clark-Pleasant"), by counsel, for its Petition against Respondent, State of Indiana, Department of Local Government Finance (hereinafter "DLGF"), brings this petition for judicial review of a final determination of the Department of Local Government Finance, and in support thereof, alleges as follows:

Parties to this Appeal

1. Clark-Pleasant is school corporation duly organized under the laws of the State of Indiana, existing in Clark and Pleasant Townships, Johnson County, Indiana, with its administrative offices located at 50 Center Street, Whiteland, Indiana.

2. The DLGF is an agency of the State of Indiana charged by statute with certain responsibilities regarding the State's property tax laws, and is further charged by Executive Order 05-19 with providing guidance to insure that school building projects are approved after consideration of statutory criteria, and is located at 100 North Senate Avenue, N-1058, Indianapolis, Indiana.

DLGF Final Determination Under Appeal

3. Clark-Pleasant hereby appeals the DLGF's Final Order of April 8, 2008, together with the "Findings" ("DLGF Determination"), which arbitrarily and without justification or support in the record, rejected in total the recommendation of the School Property Tax Control Board ("Control Board") made on November 15, 2007, to approve a lease rental agreement that would provide for the construction of a new 280,000 square foot middle school building.¹ The DLGF Determination constitutes a final determination under Ind. Code § 6-1.1-19-7(e) ("A final determination is an order that "determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process." *BP Prods. N. Amer., Inc., v. Dep't of Local Gov't Fin.*, 774 N.E.2d 122, 126 (Ind. Tax Ct. 2002). The DLGF Determination is attached hereto as Exhibit A.

4. The following were parties to the proceedings in matter No. 07-055 that preceded the DLGF Determination:

- a. The Clark-Pleasant School Corporation; and
- b. The Department of Local Government Finance (Cheryl Musgrave, Commissioner).

Right to seek Appellate Review

5. In addition to other facts justifying Petitioner's right to the relief requested herein, the following facts demonstrate that the Petitioner is entitled to obtain judicial review of the DLGF's Determination:

- a. Standing. Clark-Pleasant is entitled to obtain judicial review of the DLGF Determination under Ind. Code § 6-1.1-19-7 for the reason that

¹ The DLGF refers to this project as the "major component" of the building project. The entire project encompasses, 1) the new middle school building, 2) the conversion of the current middle school to a high school annex, and 3) improvements to the current high school building. DLGF Determination, ¶¶ 10-11. The Control Board's approval was for the entire project, and specifically included the approval of the required lease rental agreement. DLGF Determination, ¶ 15.

Clark-Pleasant is the Petitioner in DLGF matter No. 07-055, the DLGF Determination was specifically directed to Clark-Pleasant, and Clark-Pleasant is otherwise aggrieved and adversely affected by the DLGF Determination, as more fully set forth below.

- b. Exhaustion of Administrative Remedies. Ind. Code § 6-1.1-19-7 sets forth the administrative procedure for Clark-Pleasant to seek the approval of the DLGF for the school building project that was at issue in DLGF matter No. 07-055, and also sets forth this statutory remedy for judicial review of the DLGF decision. Clark-Pleasant has therefore exhausted all mandated and available administrative remedies.
- c. Timeliness of Petition. The DLGF Determination was entered on April 8, 2008. See Exhibit A. From April 8, 2008, Clark-Pleasant had forty-five (45) days, or until May 23, 2008, to file the present Petition, pursuant to Ind. Code § 6-1.1-19-7(e). Clark-Pleasant timely filed the present Petition on May 21, 2008.
- d. Certified Record. Clark-Pleasant will transmit a certified record of the administrative proceedings to the Indiana Tax Court within thirty (30) days after having received notification from the DLGF that the certified record has been prepared in accordance with Ind. Code § 6-1.1-30-6. Clark-Pleasant requested a certified copy of the record on May 1, 2008.

Errors of the DLGF Requiring Review

6. At the hearing before the Control Board, Clark-Pleasant presented detailed evidence, substantially accepted and deemed credible by the Control Board, entitling Clark-Pleasant to receive the required approval for the proposed building project. Notwithstanding the uncontroverted evidence demonstrating that Clark-Pleasant had met each of the statutory criteria set forth in Ind. Code § 20-46-7-11, the DLGF rejected the Control Board's conclusion that

Clark-Pleasant should be entitled to receive the required approval for the proposed building project. The DLGF made this determination despite the evidence in the record that established, without a shred of contradictory evidence, the current need for additional classroom facilities at Clark-Pleasant. As is noted below, the DLGF made no affirmative finding on the record regarding the suitability of the current facilities to educate the school corporation's students now, or in the future, given the certain continued influx of additional students. And, as is also noted below, the DLGF shirked its statutory responsibility as is set forth in Ind. Code § 6-1.1-19-7(d)(1)², and in effect "sent Clark-Pleasant back to the drawing board"³ to begin anew a process that has been ongoing since November, 2005. Accordingly, the Board Determination prejudiced Clark-Pleasant under one or more of the statutory³ grounds hereinafter listed, including, but not limited to:

A. The Current and Proposed Square Footage of the School Building Space per Student:

The DLGF failed to address this statutory requirement in any fashion in its Final Determination. Ind. Code § 20-46-7-11 (1) states that this factor "shall" be considered-it was not. This reviewing court therefore cannot consider this factor as any support for the DLGF Final Determination.

B. Enrollment Patterns Within the School Corporation:

The uncontroverted evidence before the DLGF was that Clark-Pleasant is currently educating high school students in portable classrooms because the high school is currently **over capacity**, and that situation will only continue to worsen due to increasing enrollment.⁴ The DLGF seemed to invite Clark-Pleasant to take some solace in the fact that projected **increased** enrollment was down from 500 students in 2005 and 2006 to 370 students in 2007. While 130 less new students per year might be helpful in some respects, this fact will not alleviate the continued need for portable classrooms, an

² Ind. Code § 6-1.1-19-7(d)(1) allows the DLGF to "...accept, reject, or accept in part and reject in part any recommendation of the tax control board....". The DLGF could have easily allowed parts of the project to move forward; after all, it noted that there was only a \$3 million difference between the plan as submitted and what it termed an "alternative plan" considered in May, 2006. DLGF Determination, ¶ 13f.

³ Points A-F are the statutory criteria that the DLGF must consider in reviewing Clark-Pleasant's proposed building project. Ind. Code § 20-46-7-11.

⁴ Enrollment at Clark-Pleasant increased from 2900 students in 1997 to 5600 students in 2007; by percentage of enrollment growth, Clark-Pleasant is the fastest growing school district in the State. Ind. Prop. Tax Control Bd. Minutes, p.4.

untenable situation that no responsible state official could advocate.⁵ The DLGF made no finding, nor could it, that enrollment would stop growing.

The uncontested evidence before the DLGF was that Clark-Pleasant had renovated and made additions to every existing school building to maximize the use of existing space. Ind. Prop. Tax Control Bd. Minutes, p.6. Nevertheless, again, the evidence was clear was that Clark Pleasant existing facilities would be at capacity by 2010. Ind. Prop. Tax Control Bd. Minutes, p.6.

While the DLGF purported to consider this statutory factor according to the mandate set forth in Ind. Code § 20-46-7-11, in fact it did not, as this statutory factor weighs heavily in favor of approval of the proposed project. DLGF Determination, ¶ 13.

C. The Age and Condition of the Current Facilities:

Here, the DLGF appeared to penalize Clark-Pleasant because it had acted responsibly in the upkeep of its existing facilities, without explaining how the existing facilities could be utilized to educate more students than they were designed to hold. It bears repeating that while Clark-Pleasant carefully considered its options to address burgeoning enrollment, it renovated and made additions to every existing school building to maximize the use of existing space. Ind. Prop. Tax Control Bd. Minutes, p.6. Clark-Pleasant never argued it needed to build because its existing facilities were substandard; to the contrary, the need at Clark-Pleasant is due to the inadequacy of the existing facilities to accommodate even the existing student population, let alone that population as it is projected to grow.

In short, while the DLGF considered this statutory factor, it did so in a vacuum, and apparently used it as a "make-weight" reason to withhold approval for the project. DLGF Determination, ¶ 20.

This statutory factor again weighs heavily in favor of approval of the proposed project.

D. The Cost per Square Foot of the Proposed Project:

Under all of the DLGF measurements ("DLGF Baselines"), which the proposed project easily met, the project was fiscally appropriate. The DLGF made detailed and specific findings how each phase of the project was in compliance:

Phase/Project	Project Cost/sq.ft	DLGF Baseline	Const. Cost/sq/ft	DLGF Baseline
Middle School	173.11	188.76	154.75	157.30
Middle/Sch. addition	NA	NA	219.33	220.00

⁵ Again, the evidence on this point was compelling-that enrollment would continue to grow at between 350-400 students/year; the DLGF picked the mid-point-370 to attack the project, and concluded that 370 was "down" from 500 students per year in the previous two years. One wonders if the DLGF would have found similar comfort if the number was 450, "down from 500....". Ind. Prop. Tax Control Bd. Minutes, p.4.

DLGF Determination, ¶ 16. The DLGF then, inexplicably, concluded that the cost of the middle school phase was "high" compared with other middle school projects. DLGF Determination, ¶ 18.

But, the comparison made by the DLGF actually favors Clark-Pleasant- it does not support a conclusion that the cost is "high". The other projects that were used in comparison were **smaller** in total square footage than the proposed project here; total project cost then would be expected to be less on smaller projects.⁶ And, of the projects that the DLGF used for comparison, **only** Clark-Pleasant met the DLGF Baseline of 188.76/sq/ft for total project cost-yet the DLGF termed the total project cost to be "high".

Again, when properly considered, this statutory factor weighs in favor of the proposed project, not against, as the DLGF attempted to argue.

E. The Effect of the Proposed Project on the School Corporation's Tax Rate:

After a recitation of matters both in the record, and matters never submitted for the record, regarding the effect of the proposed project on taxes in Clark-Pleasant, the DLGF concluded that Clark-Pleasant "...currently has a high total tax rate". DLGF Determination, ¶ 21g. This is yet another manufactured reason against the proposed project's approval, without factual support in the record.⁷

Two undisputed facts easily demonstrate that the DLGF committed reversible error in finding that this statutory criteria militated against the proposed project. First, from 1995-2006, total enrollment at Clark-Pleasant **doubled**. Clark-Pleasant Tax Cont. Bd. Presentation, Tab 5, App. A, p.7. As a result of this burden placed on the existing facilities, Clark-Pleasant renovated and made additions to every existing school building to maximize the use of existing space. Ind. Prop. Tax Control Bd. Minutes, p.6. The result was a predictable, but necessary, addition to the Clark-Pleasant total debt service. Clark-Pleasant Tax Cont. Bd. Presentation, Tab 8, Debt Service Schedule. Clark-Pleasant has only been able to get this far in the building and planning process because it acted responsibly in making these additions and renovations. To ignore

6

School Project	Square Footage	Total Project Cost	Total Project Cost/sq/ft
<i>Clark-Pleasant</i>	<i>280,000</i>	<i>48,470,000</i>	<i>173.11</i>
Avon Middle	208,000	42,730,000	205.43
Castle So.	144,000	27,402,000	190.35
Tri-Creek	197,000	43,375,000	220.18
Hanover	172,000	42,000,000	244.19

DLGF Determination, ¶ 17.

⁷ In addition to the reasons set forth above that dismantle the DLGF's unsupported statement that the tax rate is "high" compared to other county school districts, as the DLGF surely was aware, the amount of money available in any school district's general fund is determined not only by property taxes, but also by money paid from the State under the existing funding formula; these two factors are interdependent-the amount of money contributed by the State to the school's general fund then dictates the amount to be levied and collected through property taxes. But, since the funding formula considers a multitude of diverse factors in determining the amount of the State's contribution to the general fund (e.g., the number of subsidized lunches, the number of special needs and vocational students, and statutorily defined "complexity factors"), any meaningful comparison of school districts is a near impossibility.

these efforts and simply conclude that the tax rate is "high" is to ignore the undisputed history at Clark-Pleasant.

Secondly the DLGF's comparison of Clark-Pleasant to the other four Johnson County school districts⁸, is incomplete, misleading, and in many ways a clear distortion of the facts. The DLGF only once attempts to set forth comparable criteria (total assessed valuation), but only for 2 of the other four districts. DLGF Determination, ¶ 21d. Otherwise, The DLGF totally ignored pertinent issues that would have aided in this comparison such as, are the other districts growing, and if so, at what rate; what other building projects are part of the other district's debt service; do the other districts have a similar mix of residential/commercial property that makes up the property tax roll? Concluding the overall tax rate was "high" was nothing more than a simple numeric comparison, without factual basis.

But the most outlandish conclusion of the DLGF is its scolding of school officials for their explanation of the tax-neutral effect of the proposed project. DLGF Determinations, ¶¶ 13a, 21g. It was undisputed on the record that at the time of the presentation to the Control Board, the anticipated tax rate impact of \$.1350/100 assessed valuation was in fact zero, as by this time new assessed values for the school district had been received. In the absence of any contrary evidence, the DLGF termed this evidence "argumentative", and then concluded that since the overall total tax rate was "high", maintaining the current "high" tax rate through a tax-neutral project was "not persuasive". DLGF Determinations, ¶ 21g. Of course, under this Draconian standard, no new project could ever be approved, as all projects either raise the tax rate or prevent it from going lower.

Resoundingly, the undisputed fact that this project is tax neutral in light of the District's increasing Assessed Value renders the DLGF conclusion on this issue incorrect, and actually makes this statutory factor one that favors approval of the proposed project.

F. Any Other Pertinent Matter:

The DLGF stated that the "concerns of taxpayers" had not been adequately addressed. The DLGF also noted that Task Force commissioned by the school corporation had recommended an alternative building plan with a \$3 million dollar lower total cost. DLGF Determination, ¶ 13(f)⁹. The DLGF further noted that the School Board "refused the Department's request" to meet with the demonstrators to discuss the project

⁸ At one point, the DLGF compares Clark-Pleasant to all 293 school districts in Indiana, and concludes it is one of only 24 that has a debt service rate higher than the general fund tax rate. Another time, it declares that Clark-Pleasant has the 13th highest school district tax rate out of 326 school district tax rates. DLGF Determinations, ¶¶ 21c,e. Again, these are a near-worthless comparisons. If the Court examined the other school districts, would it find a similar picture of explosive enrollment placing a strain on existing facilities? Would there be a mostly residential tax base? Of course the record is devoid of any such data, because the DLGF did not bother to look.

⁹ This finding is contrary to the evidence in the record that indicates that the original Task Force recommendation was, indeed, different than the Task Force's final recommendation. But, when the Board of Trustees received more information affecting the original Option B recommendation made by the Task Force, it took that information back to the Task Force for its consideration and review which resulted in the Task Force's recommendation of the modified plan (Option B) in November, 2006, the Plan presented to the DLGF. Prop. Tax Cont. Bd. Minutes, p.5.

and find any "common ground on a modified proposal". DLGF Determination, ¶ 22.¹⁰ The fact that there is some disagreement now about how, **not whether**, to address the enrollment issue at Clark-Pleasant does not lessen the urgency of the issue to be addressed. There is an undeniable immediate need address the shortage of facilities and classroom space at Clark-Pleasant; that other plans **might** have limited merit says nothing about the plan presented and **denied in full** by the DLGF. This entire legal process has been ongoing since November, 2005, and still no building project has been approved to address the undeniable shortage of facilities and classroom space at Clark-Pleasant. Even if the School Corporation could start construction today, the construction of a new middle school will not be completed until the **Fall of 2010**.

This Court can and should take judicial notice of the fact that if this process is re-started from scratch, there will be an unavoidable increase in construction costs, which will force Clark-Pleasant to accept a lesser alternative to address its enrollment and space issues. Such a result does not benefit the taxpayers-it will no doubt result in a **higher tax rate**.

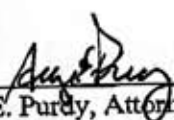
To conclude that taxpayer concerns have been given short shrift is simply wrong, and provides no legal basis for the DLGF decision.

7. Clark-Pleasant has been prejudiced by the DLGF Determination, which was (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (ii) contrary to constitutional right, power, privilege, or immunity; (iii) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations; (iv) without observance of procedure required by law; or (v) unsupported by substantial or reliable evidence.

WHEREFORE, the Petitioner prays for judicial review of the DLGF Determination, that the same be vacated and set aside in its entirety, and that an order be issued remanding this case to the DLGF for redetermination in accordance with the Order of this Court, that this Court Order that the DLGF approve the recommendation of the Property Tax Control Board, and for all further just and proper relief.

¹⁰ Despite the lack of any statutory or DLGF requirement to do so, the School Board met with the Remonstrators after the 1028 hearing, but in the end were unable to satisfy the concerns of the Remonstrators, and the race was thereafter held, with the school corporation overwhelmingly winning the race, 2,740-1,513. And, the Remonstrators **did not** present an alternative building plan to the DLGF-they, like the DLGF, would have Clark-Pleasant start from scratch. Prop. Tax Cont. Bd. Minutes, p.6. The DLGF therefore created an **additional, non-statutory** requirement for Clark-Pleasant-to meet with and somehow satisfy the Remonstrators. This action is clearly in excess of the DLGF's authority, and in violation of this Court's holding in *Huntington County Comm. Sch. Corp., et.al., v. Ind. State Bd. of Tax Comm.*, 757 N.E. 2d 235 (Ind. Tax Ct. 2001).

Respectfully submitted,



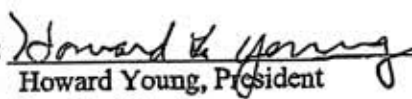
George E. Purdy, Attorney No. 10749-41
Bose McKinney & Evans LLP
135 N. Pennsylvania Street
Suite 2700
Indianapolis, IN 46204
Phone (317) 684-5000
Fax (317) 684-5173
E-mail gpurdy@boselaw.com

Attorneys for Clark-Pleasant Community
School Corporation

I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated this 20 day of May, 2008

CLARK-PLEASANT COMMUNITY
SCHOOL CORPORATION

By: 

Howard Young, President
Board of Trustees

1131711/6803-45