

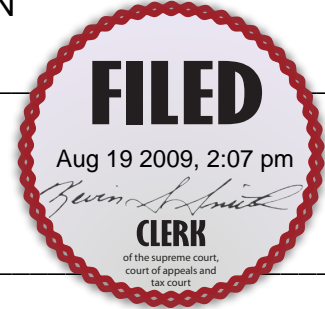
PETITIONER APPEARING PRO SE:  
**GEORGE M. MOFFETT**  
Lakeville, IN

ATTORNEYS FOR RESPONDENT:  
**GREGORY F. ZOELLER**  
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Indianapolis, IN

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**IN THE  
INDIANA TAX COURT**

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GEORGE M. MOFFETT, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
DEPARTMENT OF LOCAL )  
GOVERNMENT FINANCE, )  
 )  
Respondent. )

Cause No. 49T10-0810-TA-58

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ON APPEAL FROM A FINAL DETERMINATION OF  
THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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**NOT FOR PUBLICATION**  
**August 19, 2009**

FISHER, J.

On September 10, 2008, the Department of Local Government Finance (DLGF) issued a final determination granting modified approval of the proposed lease rental agreement between the Union-North United School Corporation (the School Corporation) and the Union-North United School Building Corporation (the Building Corporation). George M. Moffett (Moffett) challenges that final determination.

## **FACTS AND PROCEDURAL HISTORY**

The School Corporation serves a district in north central Indiana which encompasses a portion of both St. Joseph and Marshall counties. It currently operates one elementary school (kindergarten through grade 5) and one junior/senior high school (grades 7 through 12). The entire sixth grade has been taught in several modular (portable) classrooms located adjacent to the elementary school since 1999.<sup>1</sup>

In 2007, the School Corporation formed a committee, comprised of both members of its staff and the community at large, to assist it in developing a construction plan that would best accommodate its current student body as well as anticipated enrollment growth. After reviewing numerous options, the School Corporation decided to pursue a plan whereby it would make certain renovations to the elementary school in order to house kindergarten through 4<sup>th</sup> grade, construct a new intermediate school to house grades 5 through 8, and make renovations to the existing high school which would then be used solely for grades 9 through 12 (the proposed project). The total cost for the proposed project was estimated at approximately \$20,000,000.

On November 19, 2007, the School Corporation conducted a public hearing on the proposed project. At the conclusion of the hearing, the School Corporation voted unanimously to proceed with the proposal.

In December of 2007, opponents of the proposed project initiated a remonstrance process as provided by statute. The remonstrance process ultimately failed, however, as

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<sup>1</sup> The junior/senior high school also employs two modular units for additional classroom space.

only 1,313 petitions against the project were filed, opposed to the 1,781 petitions favoring the project.<sup>2</sup>

The School Corporation subsequently moved forward with its plans and approved a proposed lease rental agreement. In July of 2008, the School Corporation petitioned the DLGF to approve the execution of the lease, which provided that the School Corporation would make annual rental payments of \$1,478,000 to the Building Corporation over 26 years for the proposed project. The DLGF referred the petition to the School Property Tax Control Board (Control Board) for its recommendation. On July 17, 2008, the Control Board conducted a public hearing on the matter. After a vote, the Control Board recommended unanimously that the DLGF approve the lease rental agreement.<sup>3</sup>

On September 10, 2008, the DLGF issued a final determination in which it approved a modified lease rental agreement. The DLGF's order, in its entirety, stated:

A petition was filed on behalf of [the School Corporation] for approval of a lease with the [Building Corporation] providing for the lease of a school building for a term of twenty-six (26) years at an annual lease rental of \$1,478,000, payable in equal semiannual installments on June 30 and December 31 of each year, commencing during renovation on June 30,

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<sup>2</sup> The Court notes that on July 2, 2008, Moffett and several other taxpayers filed a Verified Complaint with the Marshall Circuit Court alleging that the remonstrance process had been flawed and the School Corporation should therefore be enjoined from proceeding with the proposed project. (See Cert. Admin. R. at 596-97.) The Marshall Circuit Court dismissed the action on August 14, 2008, when, after declaring it a public lawsuit pursuant to Indiana Code § 34-13-5, Moffett and the other taxpayers failed to post a surety bond. (See Cert. Admin. R. at 594.)

<sup>3</sup> The Control Board noted it had some concerns that with the proposed project there would be excess capacity in the renovated high school, but deferred the issue to the DLGF to resolve. (See Cert. Admin. R. at 38-39.)

2009. The first full rental installment shall commence on the date that the school building is completed and ready for occupancy or December 31, 2010, whichever is later, at an annual lease rental of \$1,478,000. The lease includes an option to purchase such building. The [DLGF] has reviewed the petition pursuant to I.C. 20-46-7-11 and the school has complied with the appropriate provisions of I.C. 6-1.1-20 and I.C. 20-46-7-8. After careful consideration of all facts, the [DLGF] takes the following action:

**MODIFIED APPROVAL:**

Execution of a lease with the [Building Corporation] providing for the lease of a school building for a term of twenty-two (22) years at an annual lease rental of \$1,478,000, payable in equal semiannual installments on June 30 and December 31 of each year, commencing during renovation on June 30, 2009. The first full rental installment shall commence on the date that the school building is completed and ready for occupancy or December 31, 2010, whichever is later, at an annual lease rental of \$1,478,000. This approval is limited to the projects described in file #08-017 as presented to the [Control Board] and the Commissioner [of the DLGF] for consideration.

If the construction bids for the Project are lower than the estimated construction costs presented to the [DLGF], the School Corporation and the [ ] Building Corporation shall amend the lease to lower the lease rental payments to an amount which will amortize the debt. The debt will be limited to total construction bids, cost of issuance, soft construction costs and construction contingencies. In total, the cost of issuance, soft construction costs and contingencies shall not exceed the amounts presented to the [DLGF] for consideration.

To obtain a debt service rate for 2008 pay 2009, the unit must comply with the provisions of I.C. 6-1.1-17-3. In addition, on or before December 31, 2008, the unit must execute the above issue and file with the [DLGF] a final amortization schedule.

(Cert. Admin. R. at 46-47.)

On October 7, 2008, Moffett filed an original tax appeal. In his complaint, Moffett asked this Court to review the DLGF's final determination because he believed it was in error and, if allowed to stand, it would "result in negative financial hardship to the citizens of the affected townships." (Cert. Admin. R. at 44.) The Court conducted a hearing on the matter on July 9, 2009. Additional facts will be supplied when necessary.

### **ANALYSIS AND OPINION**

When the DLGF reviews school construction projects, it does so as a tax specialist. See, e.g., *Graber v. State Bd. of Tax Comm'rs*, 727 N.E.2d 802, 806 (Ind. Tax Ct. 2000), review denied; *Boaz v. Bartholomew Consol. Sch. Corp.*, 654 N.E.2d 320, 325-26 (Ind. Tax Ct. 1995); *Bell v. State Bd. of Tax Comm'rs*, 651 N.E.2d 816, 819-20 (Ind. Tax Ct. 1995). Thus, the DLGF's function is not to pass judgment on how a school corporation chooses to educate its students; rather, its function is to analyze, *from a tax standpoint*, the school corporation's need for capital construction in light of its chosen educational programs and policies. See *Graber*, 727 N.E.2d at 808-09; *Boaz*, 654 N.E.2d at 325-26; *Bell*, 651 N.E.2d at 819-20.

When determining whether or not to approve a school construction project, Indiana Code § 20-46-7-11 requires the DLGF to consider the following factors:

- (1) The current and proposed square footage of school building space per student.
- (2) Enrollment patterns within the school corporation.
- (3) The age and condition of the current school facilities.
- (4) The cost per square foot of the school building construction project.
- (5) The effect that completion of the school building construction project would have on the school corporation's tax rate.

(6) Any other pertinent matter.<sup>4</sup>

IND. CODE ANN. § 20-46-7-11 (West 2008) (footnote added). The statute does not require the DLGF to assign greater weight to any one of these listed factors, nor does it require the DLGF to consider any single factor dispositive. *Id.* See also *Graber*, 727 N.E.2d at 807.<sup>5</sup> Rather, the DLGF is simply required to consider each of the listed factors, though it does not have to base its ultimate decision on them. See *id.*

Consequently, when this Court reviews a DLGF final determination regarding a school construction project, it will give deference to whatever factor or reason the DLGF bases its decision on as long as its reasoning is supported by substantial evidence.<sup>6</sup> See *Huffman v. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 809 (Ind. 2004) (citations omitted); *Filter Specialists, Inc. v. Brooks*, 879 N.E.2d 558, 571 (Ind. Ct. App. 2007) (citation omitted), *rev'd in part on other grounds by* 906 N.E.2d 835 (Ind. 2009) (footnote added). To that end, it is imperative that the DLGF provide written findings of fact in support of its final determination, as those findings enable the Court to intelligently review the final determination without speculating as to the DLGF's rationale. See *Jackson v.*

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<sup>4</sup> These same factors are to be considered by the Control Board when it makes its recommendation to the DLGF to either approve or disapprove the project. IND. CODE ANN. § 20-46-7-11 (West 2008).

<sup>5</sup> The Court notes that *Graber* analyzed a different, but identical, statute. See *Graber v. State Bd. of Tax Comm'rs*, 727 N.E.2d 802, 806-07 (Ind. Tax Ct. 2000), *review denied*. It is therefore reasonable to apply that statute's construction to Indiana Code § 20-46-7-11.

<sup>6</sup> Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Amax Inc. v. State Bd. of Tax Comm'rs*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990) (quoting *South Shore Marina, Inc. v. State Bd. of Tax Comm'rs*, 527 N.E.2d 738, 742 (Ind. Tax Ct. 1988)).

*Cigna/Ford Elec. and Refrigeration Corp.*, 677 N.E.2d 1098, 1102 (Ind. Ct. App. 1997) (stating general rule that, in all cases, administrative agencies must set out written findings of fact so that on judicial review, courts do not have to speculate as to agency's reasoning) (citations omitted).

Here, the DLGF's final determination fails to meet this standard. Indeed, the final determination offers no findings of fact, no reasoning, no analysis of any kind. *See supra* pp. 3-4.<sup>7</sup> The Court therefore REMANDS the case with instructions for the DLGF to enter specific findings of fact upon which its final determination is based and upon which judicial review may then be effectively facilitated.<sup>8</sup>

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<sup>7</sup> In its written brief, the DLGF states that it considered each of the factors listed in Indiana Code § 20-46-7-11. (See Resp't Br. at 6.) The DLGF then argues that because Moffett failed to show that the DLGF did not consider the factors, the final determination should be affirmed. (See Resp't Br. at 7-8.) The DLGF misses the point.

Whether the DLGF considered the factors in Indiana Code § 20-46-7-11 is not the problem. *See Graber*, 727 N.E.2d at 806 (explaining that while the DLGF is required to consider each of the listed factors, it does not have to base its ultimate decision on them). The problem is that it is impossible to discern why the DLGF ruled the way it did, and therefore it is impossible to discern whether its final determination is supported by substantial evidence.

<sup>8</sup> On a final note, the DLGF argues that because many of Moffett's claims as to why the DLGF's final determination is erroneous are "conclusory," "not supported with citations to the record," or "not supported by cogent argument," they fail to show that the DLGF committed reversible error. (See Resp't Br. at 4-5, 8-10.) It seems rather disingenuous, however, that the DLGF can complain about the deficiencies of Moffett's claims when those claims arise from its entirely deficient final determination. Accordingly, the Court will deal with Moffett's claims (and the DLGF's responses thereto) after the DLGF enters specific findings of fact in support of its final determination.