

**STATE APPEAL BOARD**

|               |                      |   |                    |
|---------------|----------------------|---|--------------------|
| <b>In Re:</b> | <b>Denison, Iowa</b> | ) | <b>Order</b>       |
|               | <b>Budget Appeal</b> | ) |                    |
|               |                      | ) |                    |
|               | <b>FY 2005-2006</b>  | ) | <b>May 2, 2005</b> |

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**BEFORE STATE AUDITOR, DAVID A. VAUDT; STATE TREASURER, MICHAEL L. FITZGERALD; AND THE DIRECTOR OF THE DEPARTMENT OF MANAGEMENT, MICHAEL L. TRAMONTINA:**

A hearing on the above captioned matter was held pursuant to the provisions of Chapters 24 and 384 of the Code of Iowa on April 13, 2005. The hearing was before a panel consisting of Stephen Larson, Deputy Treasurer and presiding officer, Office of the State Treasurer; Stephen Ford, City Budget Director, Department of Management; and K. David Voy, Manager, Office of the State Auditor and Luke Donahe, Investment Officer, Office of the State Treasurer.

The spokesperson for the City of Denison was Derrick R. Franck. Also present for the city was Mayor Ken Livingston, City Manager Al Roder, and City Clerk Marcia Bretey. The spokesperson for the petitioners was Richard Knowles.

Upon consideration of the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted subsequent to the hearing and after a public meeting to consider the matter, the State Appeal Board has voted to sustain the FY 2006 budget as filed.

**PROCEDURAL HISTORY**

The FY 2006 City of Denison proposed budget summary was published on the 25th day of February in the Denison Review. The required public hearing was held before the regularly scheduled council meeting and the budget was adopted on March 7, 2005.

A petition protesting the certified FY 2006 City of Denison budget was filed with the Crawford County Auditor on March 25, 2005, and was received by the State Appeal Board on March 28, 2005

**DISCUSSION**

The petitioners and representatives of the City provided various written summaries, exhibits and verbal commentary in support of their positions. A summary of the public hearing and information provided on this matter is as follows:

## **PETITIONERS**

At the budget appeal public hearing, petitioner Richard Knowles represented the petitioners. He provided oral and written remarks with various exhibits.

In his remarks, Mr. Knowles stated the appeal was made after the city council of Denison failed to discuss the written objections or oral objections raised at the budget hearing by the petitioners. The mayor and two council members were absent indicating to the petitioners that the question whether to adopt the budget over any objections had already been resolved. The petitioners claim the additional expenditures in the FY 2006 budget for the community/conference center are new and must stand the test that the appropriation is necessary, reasonable and in the best interest of the public welfare.

Petitioners concede the residents of Denison have acknowledged the need for a community center. However, the petitioners object to locating the facility at the privately owned golf course to primarily serve as a clubhouse for the golf course.

The petitioners further object to the spending for the community/conference center for the reason that the budget hearing where written and oral objections were overruled was attended by only three of the five council members and the mayor was not present to discuss the objections. The three council members acted without discussion of the issues raised, overruled those objections, and ordered the budget to be certified.

Lastly, the petitioners object to the budget because the property tax appropriation is not decreased by 25% of the collections for the local option sales tax, which was the proposition at the time the tax authorized by vote of the people.

## **CITY OF DENISON RESPONSE**

Derrick R. Franck, Counsel for the City of Denison, was the primary spokesperson for the City of Denison.

In a presentation, Mr. Franck presented the city's position that the community/conference center was budgeted in the current FY 2005 budget and therefore the burden of proof was on the objectors. Mr. Franck detailed the multi-year process that lead to committing to build a community/conference center.

In 2001, the city hired the consulting firm RDG and Associates to assess the community and assist in a long-range plan leading to the study "Denison 2020". The firm held community wide planning workshops and interviews to determine assets and liabilities and determine goals and projects that should be completed in 6-10 years. The results included the need for a community center, uptown revitalization and the hiring of a city manager.

The community/conference center project has taken longer than other goals in part due to site location. The Denison Community Golf Course, privately owned but open to the public, proposed building the center on land adjacent to the course. The golf course made a proposal that included raising \$1.5 million in donations, signing a long term lease starting at \$36,000 per year, and other agreements including the city provide new paving to the center. The city was awarded a Vision Iowa Community Attraction and Tourism (CAT) Grant for the project. The community/conference center is a planned cooperative effort with other governmental bodies and a private corporation to give the public maximum benefit of the facility at minimum cost to local taxpayers.

The city also addressed the petitioners' objection that only 3 of 5 council members were present at the hearing and voted to adopt the budget. The city stated that under Iowa law, Iowa Code section 380.4, 3 of 5 council members is a quorum with authority to bind the city.

Lastly, the city stated that 25% of local option sales tax revenue was applied to property tax reduction as required by ballot proposition. The city showed that since 2003 in excess of 25% has been applied to the debt service levy in each year with 35% applied in the FY 2005 budget year. The FY 2006 budget estimates that 26% is to be applied to debt service.

### **FINDINGS OF FACT**

1. Annually, the City of Denison, subject to various state laws and administrative rules, shall prepare and adopt a budget, certify taxes and propose budgeted expenditures. The City met those requirements.
2. Section 24.27 of the Iowa Code provides persons who are affected by any proposed budget, expenditure or levy, or by an item thereof, may appeal. The petitioners met the requirements and, pursuant to Sections 24.28 and 24.29, a hearing was scheduled and conducted
3. Section 24.30 of the Iowa Code states in part "It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted...".
4. Chapter 24 of the Code of Iowa limits the authority of the State Appeal Board to items specifically related to the local government budget process. Therefore, the State Appeal Board does not have authority to rule on the location of the Denison community/conference center.
5. The Capital Projects expenditure estimate related to the community/conference center of \$2,950,000 is included in the FY 2005 budget.

6. The City's certified FY 2006 budget includes expenditures totaling \$3,650,000 for the community/conference center. These expenditures are included in total Capital Projects program expenditures.
7. Section 372.13 of the Iowa Code states in part "A majority of all council members is a quorum". In addition, section 380.4 of Iowa Code in part states "Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the council". "As used in this chapter, "all of the members of the council" refers to all of the seats of the council including a vacant seat and a seat where the member is absent, but does not include a seat where the council member declines to vote by reason of a conflict of interest".
8. The November 3, 1998 ballot authorizing the local option sales tax provides that 25% of the revenues are to be used for property tax relief. The City's FY 2006 budget estimates include 26% or \$120,000 to be transferred from the LOST Special Revenue fund into the Debt Service fund to pay principal and interest on taxable debt.

### **CONCLUSIONS OF LAW**

The State Appeal Board has jurisdiction over this appeal pursuant to Iowa Code sections 24.28 and 384.19.

### **BASIS FOR DECISION**

The City of Denison demonstrated the public hearing and budget process complied with applicable statutes.

Expenditures related to the community/conference center were included in the FY 2005 budget. The petitioners did not satisfy the burden of proof to justify the removal of expenditures related to the project for FY 2006. The City demonstrated completion of the project was necessary, reasonable, and in the interest of the public welfare. The State Appeal Board does not have statutory authority to determine the location of the community/conference center.

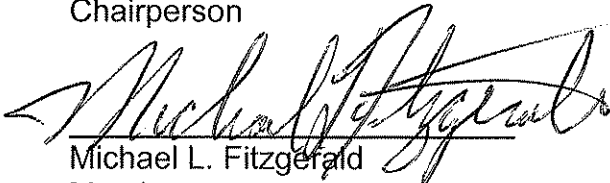
The City's FY 2006 budget includes sufficient transfers of anticipated Local Option Sales Tax collections to the Debt Service Fund for payment of the outstanding indebtedness to comply with the approved ballot language regarding use of the collections.

**ORDER**

Based on the financial position of the City of Denison and information provided by the parties involved, the State Appeal Board sustains the City of Denison budget as adopted.

**STATE APPEAL BOARD**

  
David A. Vaudt  
Chairperson

  
Michael L. Fitzgerald  
Member

  
Michael L. Tramontina  
Vice Chairperson

5.2.05  
Date