



# Valley City Public Schools

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TO: Memo to School Board  
FROM: Josh Johnson, Superintendent  
DATE: October 5, 2023  
RE: School District Building Fund Tax Levy

## Background

The Valley City Public School District (VCPS) has levied between 10 and 20 mills in our Building Fund for the past several years. The school district, as required by law, provided the Barnes County Auditor, Beth Didier, with our preliminary budget statements, held public hearings, and finalized our yearly budgets. The School District was under the impression from the county auditor we had the authority to levy up to 20 mills in the building fund, to which the Barnes County Auditor certified.

Last year, a third-party financial advisor (PFM) requested documentation authorizing the school district to levy up to 20 mills in the building fund. It was at that time VCPS uncovered voters had evidently only approved 10 mills. We reached out to the county auditor to verify if this was correct or if she could provide us with information from their records showing we could levy up to 20 mills; we were previously told by the Auditors office we had the authority to levy the 20 mills. She was unable to confirm or show record that we could levy 20 mills, and everyone acknowledged the error at the beginning of January 2023.

Subsequently, I called the North Dakota Department of Public Instruction to get an opinion. They informed me, they were unaware of any laws which requires the school district or county to correct the previous over levies. However, now that we are informed, going forward we need to abide by the 10 mills or seek voter approval to increase levying up to 20 mills in our building fund. The school board and district believe it is important to correct the error with our taxpayers, so we sought guidance from Barnes County Auditor, Beth Didier, on how to remedy the over levied amounts.

On January 9, 2023, the Barnes County Auditor recommended the school district levy zero mills in the building fund for the 2023-2024 school year and reduce the levy in 2024-2025 to repay the taxpayers. Upon this recommendation, on January 19, 2023, the VCPS School Board approved the repayment plan and immediately notified our taxpayers of the building fund over levy error and process for repayment.

On February 21, 2023, the county auditor emailed us to let us know she was trying to get direction from the North Dakota State Tax Commissioner's office. After receiving this communication, I emailed the county auditor several times requesting a meeting to discuss the information from the State Tax Commissioner's office. The intent of this request was to not only discuss this information from the State Tax Commissioner's office, but to also ensure we are in agreement prior to making any changes to the



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repayment plan or any other formal decisions. On March 6, 2023, I was informed by the county auditor that she had no updates from the state, and she would keep me posted. On March 21, 2023, she once again told our business manager via email there was nothing new to report. Other than a very brief phone call from a county commissioner in mid-May, there was no other communication we received from anyone affiliated with Barnes County on this matter until just recently.

On August 10, 2023, the school district submitted our proposed district budget and certificate of levy for the 2023-2024 school year. The certificate of levy included levying ZERO mills in our building fund – which was communicated to the taxpayers on January 19, 2023, based on the county auditor’s recommendation at that time. The county provided written tax notices at the end of August or beginning of September to property owners on the estimated tax dollars as required by the North Dakota Century Code.

On September 20, 2023, VCPS held its public budget (tax) hearing on the proposed property tax levy, which included levying zero mills for the building fund.

On September 26, 2023, I was shocked to receive an email from the Barnes County Auditor with a spreadsheet of taxpayer data. The county auditor noted in this email that the school district “will need to process the refund checks” to taxpayers on the building fund over levy. Again, other than a brief call in mid-May, this was the first time I was made aware the county was thinking the school district should process refund checks to taxpayers, instead of following the repayment plan.

On September 28, 2023, I replied to the county auditor’s email, noting my surprise, and requesting she share with us in writing the recommendations that Barnes County received from the State Tax Commissioner’s Office. I also asked why she didn’t previously communicate with us, especially after receiving our proposed 2023-2024 budget and certificate of levy on August 10, noting zero mills for the VCPS Building Fund. In this email, I stated to her that it was not financially feasible for the school district to NOT levy 10 mills in the building fund for the current school year and also send refund checks to taxpayers. Having not received any information to the contrary prior to August 10, the school board approved the preliminary budget and certificate of levy for the 2023-2024 school year and would proceed forward with the original recommendation and repayment plan. I again requested the records from the State Tax Commissioner’s office and offered that we could meet to discuss.

At this time, I reached out to the school district’s attorneys at Pearce Durick law firm and spoke with Rachel Bruner, attorney, to get her up to speed and request advice on this matter.

On Friday, September 29, 2023, I reached out directly to the State Tax Commissioner’s office, requesting a copy of any information they may have provided to Barnes County regarding the VCPS Building Fund over levy.

At the end of that day, on September 29, the Barnes County Auditor emailed me, attaching a letter she received from the State Tax Commissioner, dated April 18, 2023. The letter recommends the county





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auditor “review the laws relating to the abatement and refund of excess taxes levied to determine the most appropriate means of refunding the excess taxes levied to taxpayers.” The State Tax Commissioner also notes they have no authority over county auditors, so they recommend the auditor consult with the County Commission and State’s Attorney to determine the best mechanism to correct these errors. More than five months after the Barnes County Auditor received this letter the school district finally had the opportunity to review the state’s recommendation on this matter.

In the County Auditor’s September 29 email, she also informed us, for the first time, that she had met with the Barnes County State’s Attorney and Commission Chairman on May 1, 2023. She stated they agreed, at that meeting, the refunds would be limited to tax years 2020, 2021, and 2022, and they worked with their tax software company on developing reports to show how much was owed to the taxpayers. No official position of the county was reported to the school district prior to the auditor’s email on September 26, even though the three of them had decided upon this plan on May 1, 2023. The county auditor then noted the school board could still submit an amended budget to the county auditor’s office on or before October 10, 2023, to levy for the building fund for the current fiscal year following the county’s plan.

On Monday, October 2, 2023, Rachel Bruner, school district attorney, emailed the Barnes County State’s Attorney, Tonya Duffy, requesting information as to why they made the decisions they did and what legal authority they were basing the decision on. Rachel noted that time was of the essence in this request, but as of Thursday, October 5, 2023, she has not heard anything in response from the State’s Attorney.

On Wednesday, October 4, 2023, we were notified by Valley City Park and Recreation (VCPR) that their property valuation (mills) increased from the previously stated property valuation. Upon learning this information from VCPR, our business manager requested updated information from the Barnes County Auditor’s Office, so we would have accurate information to report at our board meeting on October 5, 2023. In response, the county auditor’s office shared that there was an increase in the estimated property valuation amounting to \$2,696.80 per mill. Had we not requested the information, it’s not clear when or if the important information would have been provided.

## Next Steps

Overall, we are beyond frustrated with the lack of communication from the county. The school district has been upfront and transparent with the public regarding the building fund over levy; however, now the county auditor, county commissioner, and state’s attorney have recommended a new plan for the school district. To be clear, there is no legal basis, that we are aware of, that supports the county suggested plan for us to issue checks back to taxpayers. As stated by the school board in January 2023, it is important that the school district works with the county to correct this error following a legal process.

With that being said, now we are in a tight time crunch. The school board should decide today how it wishes to proceed with an October 10, 2023, deadline for the Valley City Public School District to decide if they will adjust the tax levy and budget for the current fiscal year.

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Today, I recommend the school board increase the building fund tax levy to 10 mills and amend the district budget for the 2023-2024 school year. I also recommend that we continue to work with our legal counsel and request a collaborative effort with the county auditor, state's attorney, and county commission to determine the correct legal process to refund taxpayers for the building fund over levy.

Sincerely,

Josh Johnson  
Superintendent

