

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

IN THE LAKE CIRCUIT COURT
SITTING IN CROWN POINT

IN RE THE MAY 22, 2019
LAKE COUNTY BOARD OF
COMMISSIONERS' PROPERTY
TAX SALE

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)
)
) **CAUSE NO. 45C01-1912-TP-002354**

WINDY CITY ACQUISITIONS, LLC,

)
) PARCEL NUMBER:
) 45-07-13-357-007.000-003
)

Petitioner,

v.

LELAND M. SIMMS AND OTHER
INTERESTED PERSONS,

Respondents.

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Filed in Open Court

DEC 17 2020

Lorenzo Arredondo
CLERK LAKE CIRCUIT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on October 8, 2020 for bench trial on Petitioner's Verified Petition for Tax Deed and Objections to Issuance of Tax Deed filed by Brentwood Equitable Trust Trust No: 1003-061387 (hereinafter referred to as "Brentwood Trust") and Intervening Petitioner, Green Leaf Enterprises, LLC (hereinafter referred to as "Green Leaf Enterprises, LLC"). Petitioner, Windy City Acquisitions, LLC appeared in person and by counsel, Anthony Walker; Respondent Brentwood Equitable Trust Trust No: 1003-061387 appeared in person and by counsel, Jynelle Berkshire; Green Leaf Enterprises, LLC appeared by counsel, Michael Kvachkoff; and the Lake County Auditor's office appeared by counsel, Randy Wyllie. Hearing held, parties sworn, testimony and documentary evidence presented. At the conclusion of the final hearing, the Court took this matter under advisement and the parties were ordered to submit Proposed Findings of Fact and Conclusions of Law.

In rendering this decision, the Court has carefully considered all of the testimony and evidence presented, and has given due consideration to all of the current statutes and case law. The Court renders these findings after having assessed the credibility of the witnesses and after giving due consideration to their testimony. The Court has seen witnesses, observed their demeanor, and scrutinized their testimony as it came from the

witness stand.

I. FINDINGS OF FACT

1. On May 22, 2019, the Lake County Board of Commissioners conducted a public auction wherein Alexander Petrovski (*the original tax sale purchaser*) purchased a Tax Sale Certificate for the highest bid as to the following described real estate situated in the County of Lake, State of Indiana, to wit:
 - i. A rectangular parcel of land in the Southwest Quarter (SW1/4) of the Southwest Quarter (SW 1/4) of Section 13, Township 36, Range 9, West of the 2nd Principal Meridian. Beginning at a point on the East line of Dallas Street which is 290 feet North of a point that is 990.135 feet East of the Southwest Corner of Section 13, thence running North along the East line of Dallas Street a distance of 10 feet, thence East 165.02 feet, thence South a distance of 10 feet, thence West a distance of 165.02 feet to the place of the beginning
 - ii. Commonly known address: 5820-36 W. 29th Avenue, Gary, Indiana 46406 (hereinafter referred to as the "subject property")
 - iii. Parcel Number: 45-07-13-357-007.000-003
 - iv. Tax Sale Certificate Number: 451800963
2. The subject property is a vacant, ten-foot, unimproved parcel of land owned by Leland M. Simms and located adjacent to 2865 Dallas Street, Gary, Indiana 46406 (hereinafter referred to as the "adjacent property").
3. The time for redemption expired September 19, 2019.
4. The real estate was not redeemed.
5. On December 11, 2019, Alexander Petrovski (*original tax sale purchaser*) assigned the Tax Sale Certificate to Windy City Acquisitions, LLC (hereinafter referred to as "Petitioner").
6. On December 16, 2019, Petitioner filed before this Court a Verified Petition for Tax Deed.
7. On January 8, 2020, this Court scheduled the matter for final hearing on March 19, 2020.
8. On March 17, 2020, Brentwood Equitable Trust (hereinafter referred to as "Respondent") filed an objection to the Verified Petition for Tax Deed. Brentwood

Equitable Trust is the successor of Lloyd Simms, who is the brother and heir of Leland M. Simms (*now deceased*).

9. On March 17, 2020, the Court postponed the hearing *sua sponte* due to the COVID-19 pandemic and rescheduled it for June 25, 2020.
10. On October 8, 2020 the Court heard testimony from Lloyd Simms, (*brother of Leland M. Simms*) about assigning his interest as an heir in the subject property to three (3) separate entities, one of them being Green Leaf Enterprises, LLC.
11. The Court lacked sufficient evidence to determine if Green Leaf Enterprises, LLC had a legally binding purchase agreement executed by Lloyd Simms (*brother of Leland M. Simms*) or if it had been revoked.
12. On October 6, 2020, Attorney Michael Kvachkoff appeared on behalf of intervening party Green Leaf Enterprises, LLC (*third party entity asserting a substantial interest in the subject property*) and filed an objection to the Verified Petition for Tax Deed.
13. On October 8, 2020, this Court conducted a bench trial on the merits with all parties present, testimony heard and evidence submitted.
14. Gina Scheidt, supervisor of the Lake County Auditor's Office tax sale department, testified at trial that the subject property was solely owned in the name of Leland M. Simms for all times relevant to noticing and that the only owner mailing address on file in the Lake County's Auditor's office was 2865 Dallas Street, Gary, Indiana 46406. She further testified that the Lake County Auditor's office had not received any requests to change the owner address of record. Additionally, she testified that no showing of a death certificate or notice of a survivorship affidavit was included in the chain of title for the subject property.
15. Kevin Marshall, attorney for Alexander Petrovski, (*original tax sale purchaser*) testified that he prepared the certified mail, return receipt, to Leland M. Simms at the address of 2865 Dallas Street, Gary, Indiana 46406, tracking number 70131090000160452889. The certified mail to Leland M. Simms at the address of 2865 Dallas Street, Gary, Indiana 46406 was later returned by the U.S. Postal Service by reason of "Attempted Not Known, Unable to Forward". *Petitioner's Exhibit "B."*
16. Attorney Kevin Marshall testified that he knew of a second address for Leland M. Simms from the title search he ordered from Community Title Company,

Merrillville, Indiana, wherein the title search referenced a case, Capital One Bank (USA), N.A. v. Leland M. Simms filed May 1, 2014 under Cause Number 45D08-1403-SC-001571. Attorney Marshall testified when he reviewed the Capital One Bank (USA), N.A. v. Leland M. Simms case he became aware of an alternative address for Leland M. Simms at 3624 Burr Street, Gary, Indiana 46408. The 3624 Burr Street, Gary, Indiana 46408 address is reflected on the 4.5 Notice of Sale in Petitioner's Exhibit "B."

17. In the Exhibit "B" Notice of Tax Sale (hereinafter referred to as the "4.5 Notice") attached to Petitioner's Verified Petition for Tax Deed filed before this Court on December 16, 2019, Petitioner attested that the 4.5 Notice was sent via certified mail to:

- (1) Leland M. Simms, 2865 Dallas Street, Gary, IN 46406;
- (2) Leland M. Simms, 3624 Burr Street, Gary, IN 46408;
- (3) Stenger & Stenger PC, 2618 E. Paris Ave. SE, Grand Rapids, MI 49546; and
- (4) Blitt & Gaines PC 661 Glenn Av., Wheeling, IL 60090.

18. Attorney Kevin Marshall testified that Nick Petrovski (*co-worker of Alex Petrovski (original tax sale purchaser)*), gave him a receipt from the U.S. Post Office, Crown Point, 128 S. East Street, Crown Point, IN 46307 for the items Nick Petrovski mailed to four (4) parties above via certified mail, return receipt, and first-class mail. *Petitioner's Exhibit "B."*

19. The postal receipt showed that items were mailed via certified mail, return receipt, and regular US First Class Mail to three (3) addresses:

- (1) Leland M. Simms, 2865 Dallas Street, Gary, IN 46406;
 - (2) Stenger & Stenger PC, 2618 E. Paris Ave. SE, Grand Rapids, MI 49546; and
 - (3) Blitt & Gaines PC 661 Glenn Av., Wheeling, IL 60090.
- Petitioner's Exhibit "B."*

20. Attorney Kevin Marshall testified that he believed he was required to send the 4.5 Notice to Leland M. Simms at the alternative address of 3624 Burr Street, Gary, Indiana 46408.

21. Attorney Kevin Marshall also testified that the certified mailing to Leland M. Simms at 2865 Dallas Street was returned as undeliverable on August 12, 2019

(Exhibit "B"). Attorney Marshall testified that the regular mail notice to the same address was not returned as undeliverable.

22. Attorney Kevin Marshall provided evidence that the 4.5 Notice was mailed by certified mail and regular mail to Leland Sims at 2865 Dallas Street as well as Stenger & Stenger PC and Blitt & Gaines PC, but failed to provide any documentary evidence that the 4.5 Notice was mailed via certified mail, return receipt, to Leland M. Simms at 3624 Burr Street, Gary, Indiana.
23. The post office receipt included in Exhibit "B" contained four (4) First Class Mail Letter charges as well as three (3) Certified Return Receipt Letter charges with tracking numbers that matched identically to the Certified Mail Receipts (also included in Exhibit "B") for Leland M. Simms at 2865 Dallas Street as well as Stenger & Stenger PC and Blitt & Gaines PC. No additional certified tracking numbers appeared on the post office receipt nor were included in Exhibit "B" for 3624 Burr Street, Gary, Indiana.
24. Finally, Attorney Kevin Marshall testified that he was operating under the assumption that Leland M. Simms was alive, and that he had no knowledge that Leland M. Simms was deceased until litigation began in this action.
25. Leland M. Simms died intestate on January 22, 2013, leaving no spouse, children, or descendants of any predeceased child or children.
26. Lloyd Simms, (*brother of Leland M. Simms*), testified that the heirs of Leland M. Simms were he; his brother, Wayne E. Simms, who lives in Oklahoma; and his sister, Darlene A. Simms, who lives in Merrillville, Indiana.
27. Lloyd Simms (*brother of Leland M. Simms*), testified that Leland M. Simms had owned the subject property since July 27, 2001.
28. Lloyd Simms (*brother of Leland M. Simms*) testified at trial that he filed a mail forwarding request on behalf of his deceased brother with the United States Postal Service in 2014 sending Leland M. Simms's mail addressed to 2865 Dallas Street to 3624 Burr Street.
29. Lloyd Simms (*brother of Leland M. Simms*) also testified that he still receives forwarded mail for his brother, Leland M. Simms, at his 3624 Burr Street address, but he does not open the mail and throws the mail in the garbage.
30. Despite this testimony, Lloyd Simms (*brother of Leland M. Simms*) further testified that he did sign for and open the 4.6 Notice sent by Attorney Anthony

Walker addressed to Leland M. Simms at 3624 Burr Street, Gary, Indiana, which prompted him to call Attorney Anthony Walker's office and inquire about the 4.6 Notice. (Further information regarding the 4.6 Notice begins in Paragraph 40 of this Order).

31. Alexander Petrovski (*original tax sale purchaser*) testified that he posted the 4.5 Notice on the subject property on August 13, 2019. Alexander Petrovski further testified that he used the Lake County GIS mapping system to identify the subject property.
32. Alexander Petrovski (*original tax sale purchaser*) testified that he posted the 4.5 Notice on the subject property "inside the fence."
33. On cross-examination by attorney Jynelle Berkshire, after being shown Respondent's Exhibit "6" (*picture of subject property and adjacent property*), Alexander Petrovski testified that he agreed there existed a wood/steel fence structure on the subject property. Petrovski further testified that he posted the 4.5 Notice in between the wood/steel fence structure.
34. No evidence was submitted nor was testimony given that the 4.5 Notice was posted on 5820-36 W. 29th Avenue, the subject property.
35. On December 11, 2019, Petitioner, was assigned the tax sale certificate for the subject property from Alexander Petrovski. During this time, the Petitioner was in the process of acquiring surrounding properties adjacent to and near the location for the future Hard Rock Casino.
36. That construction on the Hard Rock Casino began on or about January 10, 2020.
37. Lloyd Simms (*brother of Leland M. Simms*) testified that he would walk by the subject property on a weekly basis once construction on the Hard Rock Casino began.
38. Lloyd Simms (*brother of Leland M. Simms*) testified that he could not recall exactly when he first observed the signpost with the Notice¹. When asked by attorney Michael Kvachkoff if he recalled seeing the posting of the Notice within the last year, Lloyd Simms testified "it was within the last year." When further questioned by attorney Michael Kvachkoff if it would have been before or after October 2019, Lloyd Simms testified "after."

¹ It was unclear from Lloyd Simms's testimony if he was referring to the 4.5 or 4.6 Notice.

39. Lloyd Simms (*brother of Leland M. Simms*) testified that the tape around the Notice was "lime green or something like that." Lloyd Simms also testified that he did not read the Notice, based on its location, because he assumed it was related to the home located at 2865 Dallas Street, which had been sold in 2013.
40. Sybil Walker, legal assistant to Attorney Anthony Walker (*Petitioner's counsel*), testified that on December 17, 2019 she mailed via certified, return receipt, and regular mail a 4.6 Notice to Leland M. Simms at both the Dallas Street address and Burr Street address. She also testified that neither of the notices sent regular mail were returned to sender and that a return receipt green card was received for the certified mailing sent to Burr Street showing the recipient's signature as Lloyd Simms dated January 18, 2020. (*Exhibit "C"*). The certified mailing sent to Dallas Street was returned to sender as unclaimed on January 21, 2020. (*Exhibit "C"*).
41. Rich Zeigler, the Vice President of Development for Spectacle Entertainment, and authorized agent of Petitioner, Windy City Acquisitions, LLC, testified that he posted the 4.6 Notice on the subject property on December 20, 2019; he took the picture of the 4.6 Notice that he posted on the subject property; and the pictures contained in Petitioner's Exhibit "C" accurately depict where he posted the 4.6 notice on the subject property.
42. Rich Zeigler testified that he tied the 4.6 Notice to the metal fence located on the subject property and that the sign was a notice taped with black tape around the edge on a piece of wood with a wood stick and that he understood it to be the front boundary of the adjacent property.
43. Rich Zeigler testified that he posted the 4.6 Notice on "Dallas Street" and not on "W. 29th Avenue."
44. Rich Zeigler further testified that Petitioner, Windy City Acquisitions, LLC, purchased the property at 2865 Dallas Street, Gary, Indiana 46406 (adjacent property) from sellers, Maria G. Herrera and Ignacio Alvarez on December 16, 2019, and that he knew that Herrera and Ignacio lived in the white house on the adjacent property as he had talked to them there.
45. Rich Zeigler testified that he met with Lloyd Simms (*brother of Leland M. Simms*) in the driveway at Lloyd Simms's property at 3624 Burr Street, Gary after September 19, 2019, but that he did not inform Lloyd Simms that the subject

property was sold in the Lake County Commissioners Tax Sale as Zeigler was not aware of that himself. During that same conversation, Lloyd Simms informed Rich Zeigler that Leland M. Simms was deceased.

46. Rich Zeigler further testified that sometime in December, 2019 he was aware that Leland M. Simms did not live at 2865 Dallas Street, Gary, Indiana 46408.
47. Gary A. Radtke, a land surveyor with Radtke Engineering and Surveying, LLC, testified that the 4.5 and 4.6 Notices, as depicted in Exhibit "F," were posted on "Dallas" Street.
48. No testimony was provided by Gary A. Radtke as to when the survey (*Petitioner's Exhibit "G"*) was prepared, who posted the 4.5 and 4.6 Notices, or when they were posted.
49. Lloyd Simms (*brother of Leland M. Simms*) testified that he grew up in the white house at 2865 Dallas Street, Gary, Indiana 46406 and that it had been in his family since the early 1900s; that the front of the property on 2865 Dallas Street, Gary, Indiana had a steel fence, which had been on the property ever since he was a kid and that hadn't changed in the past five to ten years; and that the steel fence stopped at the edge of 2865 Dallas Street. Lloyd Simms further testified that the steel fence was never located on the subject property. Simms also testified that the pictures from the Lake County GIS system depicted in Respondent's Exhibit "6" accurately reflected what the properties looked like. *Respondent's Exhibit "6"*.
50. Lloyd Simms (*brother of Leland M. Simms*) testified, after review of the picture of the posted 4.5 Notice, depicted in Petitioner's Exhibit "C," that the 4.5 Notice was not posted on the subject property but rather on the adjacent property given that the 4.5 Notice was posted in the middle of the steel fence, which is located on the adjacent property.
51. Lloyd Simms (*brother of Leland M. Simms*) further testified, that in review of the picture of the posted 4.6 Notice in Petitioner's Exhibit "C," that the 4.6 Notice was not posted on the subject property either but rather on the adjacent property given that the 4.6 Notice was also posted in the middle of the steel fence, which is located on the adjacent property.
52. Lloyd Simms (*brother of Leland M. Simms*) testified that he lives at 3624 Burr Street, Gary, Indiana 46408 and that he has lived there for approximately twenty

(20) years. Lloyd Simms testified that he did receive mail from Attorney Anthony Walker's office, which later was confirmed to be the 4.6 Notice. Lloyd Simms testified that he never received any mail from Attorney Kevin Marshall's office and that there was nothing ever posted on his door at Burr Street notifying him of the tax sale process as to the subject property.

II. CONCLUSIONS OF LAW

53. When an owner of real estate fails to pay property taxes, the property may be subject to sale in settlement of delinquent taxes. I.C. 6-1.1-24-1 to 14. A purchaser can acquire title to property by purchasing it at a tax sale. If the property offered for sale is not sold in the county tax sale, the county executive acquires the tax lien for the property in the amount of the minimum sale price and is issued a tax sale certificate. The county does not pay any money to acquire this lien. I.C. 6-1.1-246(c).
54. The county executive has the same rights as a purchaser, I.C. 6-1.1-24-6(b), the same responsibilities as the purchaser, *Northern Indus. V. Board of Comm'rs*, 627 N.E.3d 1319 (Ind. Ct. App. 1994), and may offer the properties in a left-over sale, commonly referred to as the commissioners' certificate sale. I.C. 6-1.1-24-6.1.
55. If the owner of record does not redeem the property from the commissioners' sale within the required period, the purchaser may petition the trial court for issuance of the tax deed. The purchaser must provide notice of the petition to the owner of record in the same manner set forth in I.C. 6-1.1-25-4.5 and 4.6.
56. A purchaser or the purchaser's assignee of a certificate of sale under I.C. 6-1.1-24-6.1(c) is entitled to a tax deed to the property for which the certificate was sold only if: (c)
- (1) the redemption period specified in section 4(c) of this chapter has expired;
 - (2) the property has not been redeemed within the period of redemption specified in section 4(c) of this chapter; and
 - (3) not later than ninety (90) days after the date of sale of the certificate of sale under I.C. 6-1.1-24, the purchaser gives notice of the sale to:
 - (A) the owner of record at the time of the tax sale; and

(B) any person with a substantial property interest of public record in the tract or item of real property. I.C. 6-1.1-25-4.5(c); and

(d) The person required to give the notice under subsection (a), (b) or (c) shall give ***the notice by sending a copy of the notice by certified mail, return receipt requested***, to:

(1) the owner of record at the time of the:

(A) sale of the property;

(B) acquisition of the lien on the property under I.C. 6-1.1-24-6; or

(C) sale of the certificate of sale on the property under IC 6-1.1-24; at the last address of the owner for the property, as indicated in the records of the county auditor; and

(2) any person with a substantial property interest of public record at the address for the person included in the public record that indicates the interest. However, if the address of the person with a substantial property interest of public record is not indicated in the public record that created the interest and cannot be located by ordinary means by the person required to give the notice under subsection (a), (b), or (c), the person may give notice by publication in accordance with IC 5-3-1-4 once each week for three (3) consecutive weeks.

I.C. 6-1.1-25-4.5(d) (emphasis added).

57. The title conveyed by a tax deed may be defeated if the notices required by Section 6-1.1-25-4.5(a) were not in substantial compliance with the manner prescribed by statute. I.C. 6-1.1-25-16(7).

58. The purpose of a post-sale notice is to inform interested parties that the tax lien on the property has been sold for delinquent taxes and to apprise them of the right to redeem and when that right expires. Notice to interested parties of the right to redeem is required as an element of due process. *Marion County Auditor*

and *McCord Investments v. Sawmill Creek, LLC*, 964 N.E.2d 213, 217 (Ind. 2012). The post-tax sale noticing must be done in substantial compliance with the statutes governing the notice and must satisfy the due process requirements of the United States Constitution. *Id.*

59. The United States Supreme Court has stated that prior to the government taking a property for unpaid taxes, owners and those with a substantial interest, are entitled to notice pursuant to the Due Process Clause of the Fourteenth Amendment. In *Jones v. Flowers*, the Court asserted, “This action by the state [the action of taking one’s property and selling it at the tax sale] conflicts with the rights of the property owner thus “[b]efore a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner “notice and opportunity for hearing appropriate to the nature of the case”. *Marion County Auditor and McCord Investments v. Sawmill Creek, LLC*, 964 N.E.2d 213, 217 (Ind. 2012) (citing *Jones v. Flowers*, 547 U.S. at 220, 223 (U.S. 2006), 126 S. Ct. at 1712, 164 L. Ed. 2d at 423) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 656-57, 94 L. Ed. 875, 873 (1950)). While actual notice is not required, the government must attempt notice in a way desirous of actually informing the property owner that a tax sale is looming. *Id.* If the government becomes aware that its notice attempt was unsuccessful, such as through the return of certified mail, it must take reasonable steps to notify the owner of the property if practical to do so. *Id.*
60. It is an “elementary and fundamental requirement” of the Due Process Clause of the Fourteenth Amendment that before it institutes an action to sell a delinquent property, “a State must provide ‘notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795, 103 S.Ct. 2706, 2709, 77 L.Ed. 180 (1983) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 875 (1950)).
61. In *Ind. Land Tr. Co. v. XL Investment Properties, LLC*, 20S-MI-62 (Sup. Ct., October 27, 2020), the issue presented to the Supreme Court was framed as whether when notice of a tax sale is mailed to the owner and returned

undeliverable, the government must take additional reasonable steps to provide notice before taking the owner's property. *Id.* at 223, 126 S.Ct. at 1712. Applying the facts of *Jones* to this framework, someone desirous of actually informing a property owner that his house was subject to a tax sale would surely take "additional reasonable steps" to give notice if a mailing were returned. *Id.*, 126 S.Ct. at 1716. In *Ind. Land Tr. Co.*, the Court held that the county auditor satisfied due process requirements because, under the circumstances of that case, the auditor's actions provided notice reasonably calculated, under all circumstances, to apprise Trust 4340 of the pendency of the action and afforded them an opportunity to present their objections. *Id.* However, the Court observed that posting notice on bare, unimproved land was not practical. *Id.*

62. Applying the analytical framework of *Jones* to the facts in this case, the Court must consider the following:

First, the Due Process Clause of the Fourteenth Amendment requires the government to provide "notice and opportunity for hearing appropriate to the nature of the case" *Id.*

Second, "actual notice" is not required by due process. *Id.* Rather, due process requires the government to provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." *Id.* The government must take additional reasonable steps if practical when notice via certified mail is returned. *Id.*

Third, to assess the adequacy of a particular form of notice, a court must balance the interest of the State against the individual interest sought to be protected by the Fourteenth Amendment. *Id.*

63. Here, the original tax sale certificate purchaser, Alexander Petrovski, hired Attorney Kevin Marshall to prepare the 4.5 Notice of Sale to Leland M. Simms and other persons who may have a substantial interest of public record in the subject property. Testimony by Attorney Kevin Marshall revealed that he did not know at the time of preparing the 4.5 Notice of Sale that Leland M. Simms was deceased. He prepared a 4.5 Notice of Sale to be sent simultaneously to Leland M. Simms via certified mail, return receipt, at the addresses of 2865 Dallas Street, Gary, Indiana 46406 and 3624 Burr Street, Gary, Indiana 46408. The certified

mail was returned as undeliverable from the 2865 Dallas Street address. Attorney Kevin Marshall testified that he knew of and had actual notice of an alternative address of 3624 Burr Street, Gary, Indiana 46408 for Leland M. Simms from the title search he ordered. He also testified that he believed he sent the 4.5 Notice of Sale to Leland M. Simms by certified mail, return receipt, and first-class mail to the 3624 Burr Street, Gary, Indiana 46408.

64. The evidence in Petitioner's Exhibit "B" fails to demonstrate that certified mail, return receipt, was sent to Leland M. Simms at the 3624 Burr Street, Gary, Indiana 46408 address.
65. Petitioners argued that the only address to which Alexander Petrovski (*original tax sale purchaser*) and they were required to send the 4.5 and 4.6 Notices to for Leland M. Simms was the 2865 Dallas Street address as it was the address of record in the Auditor's records as to where tax bills are to be mailed. They further argued that the parties were not required to send notice of the sale or the filing of the Petition for Tax Deed to the Burr Street address. However, this Court must follow the rulings in *McBain v. Hamilton County* and *Mennonite Bd. Of Missions v. Adams* and apply them here.
66. In *McBain*, the Auditor sent out Notice of the Tax Sale to the tax bill address but the same was returned with a forwarding address. The Auditor ignored the forwarding address and did not send the Notice to it. The Court found that the failure to forward the mail on to the updated address "failed to meet the 'practicalities and peculiarities' of this case and deprived the McBains of notice reasonably calculated under all the circumstances to apprise them of the pendency of the tax sale." *McBain v. Hamilton County*, 744 N.E.2d 984, 989 (Ind. Ct. App. 2001).
67. Like *McBain*, Petrovksi (*original tax sale purchaser*) had an updated address for Leland M. Simms at the Burr Street address, the same which Attorney Marshall testified he obtained through his title search. Further, Attorney Marshall testified that, not only was he required to send the 4.5 Notice to the Burr Street address, that he thought he had done so.
68. *Mennonite* bolsters the fact that the Burr Street address was a required address as it held that "notice by mail . . . to ensure actual notice is a minimum constitutional precondition to a proceeding which adversely affect the liberty and

property interest of any party . . . if its name and address are reasonably ascertainable.” *Mennonite Bd. Of Missions v. Adams*, 462 U.S. 791, 800 (1983) (emphasis added).

69. Failure to send the 4.5 Notice to the Burr Street address results in the failure to meet the “practicalities and peculiarities” standard of *McBain* and the *Mennonite* standard since Petrovski (*original tax sale purchaser*) had the Burr Street address readily available to him yet failed to successfully utilize it. This error is compounded by the fact that when the Petitioner sent the 4.6 Notice to the Burr Street address, Lloyd Simms (*brother of Leland M. Simms*) received it and followed up on its purpose with Attorney Anthony Walker.
70. The Court heard testimony from Lloyd Simms (*brother of Leland M. Simms*) that when he received the 4.6 Notice sent from Attorney Anthony Walker on behalf of Windy City Acquisitions, LLC on January 18, 2020 at the 3624 Burr Street address, the redemption period had already expired on September 19, 2019.
71. The Petitioner further argued that, while Lloyd Simms (*brother of Leland M. Simms*) was not a person with a “substantial property interest of public record” and therefore not entitled to notice, he was deemed to have actual notice of the tax sale proceeding since he actually saw the posting of a tax sale Notice posted between the steel fence.
72. Lloyd Simms (*brother of Leland M. Simms*) testified that his weekly walks through the neighborhood, which included walking past the subject and adjacent properties, did not commence until the Hard Rock Casino began construction on or about January 2020. Lloyd Simms further testified that he is positive he did not see the 4.6 Notice posted between the wood / metal fence until after October 1, 2019.
73. The tax sale redemption period expired on September 19, 2019.
74. No evidence was presented to demonstrate that Lloyd Simms (*brother of Leland M. Simms*) had actual notice of the tax sale proceeding until after the redemption period had expired.
75. The Court finds Lloyd Simms (*brother of Leland M. Simms*) was not entitled to notice under Indiana Law, as a person with a substantial property interest of public record and therefore was not entitled to notice of the tax sale proceeding for the subject property.

76. The Court finds that Lloyd Simms (*brother of Leland M. Simms*) did not have actual notice of the tax sale prior to the tax sale redemption period expiring.
77. Both Petrovski (*original tax sale purchaser*) and the Petitioner testified that they posted the 4.5 and 4.6 Notices on a signpost in front of a vacant piece of land, which they understood to be the subject property. Further, the Petitioner argued that the only address that they needed to send notice to was 2865 Dallas Street and that when the mail came back as undeliverable, pursuant to *Jones v. Flowers*, the additional reasonable step that they took was to post the notice on a vacant parcel of land. The Court questions the level of “desire” of Petitioner or Petrovski in performing this method of noticing when they could have simply posted the notice on the home located at 2865 Dallas Street, the intended recipient of the notice, which was adjacent to the subject property in question. It would have taken no additional time to post notice of the tax sale proceeding on the residence at which they believed Leland M. Simms to be receiving mail.
78. The Court heard testimony from Alexander Petrovski (*original tax sale purchaser*) that he posted the 4.5 Notice of Sale and testimony from Rich Ziegler of Windy City Acquisitions, LLC that he posted the 4.6 Notice. As in *Marion County Auditor and McCord Investments v. Sawmill Creek, LLC*, when noticing is done on a vacant parcel of land, it is considered suspicious noticing. The Indiana Supreme Court in *Ind. Land Tr. Co. v. XL Investment Properties, LLC* also observed that posting notice on bare, unimproved land was not practical. The same is true in this case.
79. The Court heard testimony that on December 16, 2019 Windy City Acquisitions, LLC purchased 2865 Dallas Street and then on December 20, 2019 Rich Zeigler posted the 4.6 Notice on property which was identified as 2865 Dallas Street. The Court finds that any posting on property already owned by the party seeking title to property is not an additional reasonable step.
80. Based on the foregoing, the Court finds Petitioner failed to substantially comply with and give adequate notice, pursuant to I.C. 6-1.1-25-4.5 and the Due Process Clause of the United States Constitution, to Leland M. Simms and any party that has a substantial property interest of public record in the subject property.
81. The Court finds Petitioner failed to substantially comply with and give adequate notice, pursuant to I.C. 6-1.1-25-4.6 and the Due Process Clause of the United

States Constitution, to Leland M. Simms and any party who has a substantial property interest of public record in the subject property.

82. As such, pursuant to I.C. 6-1.1-25, the redemption period is extended for 120 days from the date of this judgment order for Respondent to pay any delinquent taxes, special assessments, interest, penalties and costs.

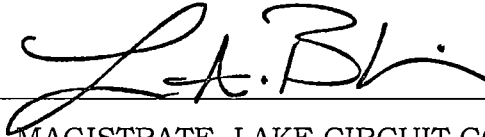
83. The Lake County Auditor shall remove taxes, interest, penalties, and costs from the real property pursuant to I.C. 6-1.1-25.

84. The Petitioner is not entitled to the issuance of the tax deed.

85. Respondent's objection to the issuance of the tax deed is with merit and should be granted.

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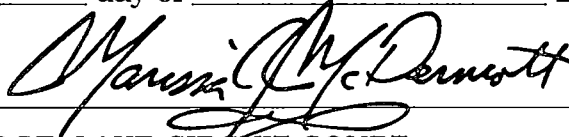
FOUND AND RECOMMENDED this _____ day of _____ 2020.



MAGISTRATE, LAKE CIRCUIT COURT

DEC 17 2020

SO ORDERED AND APPROVED this _____ day of _____ 2020.



JUDGE, LAKE CIRCUIT COURT

DISTRIBUTION:

All parties and attorneys of public record