

**STATE BOARD OF ACCOUNTS**  
**302 West Washington Street**  
**Room E418**  
**INDIANAPOLIS, INDIANA 46204-2769**

SPECIAL EXAMINATION REPORT  
OF

BOARD OF COUNTY COMMISSIONERS  
2010 POST-TAX SALE  
CLARK COUNTY, INDIANA

October 4, 2010 to December 31, 2011



**FILED**  
07/17/2014



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COUNTY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
President of the Board of County Commissioners	M. Edward Meyer	01-01-10 to 12-31-11
	Les Young	01-01-12 to 12-31-12
	Jack Coffman	01-01-13 to 12-31-14
President of the County Council	Jack Coffman	01-01-10 to 12-31-10
	Kevin Vissing	01-01-11 to 12-31-11
	Barbara Hollis	01-01-12 to 12-31-14



**STATE OF INDIANA**  
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF CLARK COUNTY

We have examined the records of the Board of County Commissioners for the 2010 Post-Tax Sale for the period from October 4, 2010 to December 31, 2011, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Examination Results and Comments. The financial transactions of this office are reflected in the Annual Reports of Clark County for the year 2010 and for the year 2011.

STATE BOARD OF ACCOUNTS

November 5, 2013

BOARD OF COUNTY COMMISSIONERS  
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AUDIT RESULTS AND COMMENTS

**BACKGROUND INFORMATION**

Terminology

The subsequent Examination Results and Comments cite various terms used in Indiana statutes related to the statutory process for the collection of delinquent property taxes. The following is a list of terms cited and a description of their meaning as used in the subsequent Examination Results and Comments. The references in parentheses do not represent exact quotes, but provide the source of the information presented.

**Tax Sale:** The county treasurer shall sell the tract or item of real property, subject to the right of redemption, to the highest bidder at public auction. The property may not be sold for an amount less than the delinquent taxes, penalties, and other charges on the property, commonly called the minimum bid. (Indiana Code 6-1.1-24-5)

**Tax Sale Certificate:** When a tract or an item of real property is offered for sale and an amount is not received equal to or in excess of the minimum sale price prescribed in Indiana Code 6-1.1-24-5, the Board of County Commissioners acquires a lien in the amount of the minimum sale price. This lien attaches on the day after the last date on which the tract or item was offered for sale. When a county executive acquires a lien under this section, the County Auditor shall issue a tax sale certificate. (Indiana Code 6-1.1-24-6)

**Certificate of Sale:** The term "Certificate of Sale" is synonymous with the term "Tax Sale Certificate."

The Board of County Commissioners offers to the public the certificates of sale acquired by the Board of County Commissioners under Indiana Code 6-1.1-24-6. (Indiana Code 6-1.1-24-6.1)

**Redemption:** Right of redemption gives property owners who pay off the liens on their property the ability to prevent transfer of their property, after the tax sale or sale of the certificate has occurred. (Indiana Code 6-1.1-25-1)

**Redeemed:** Pay the necessary money to clear a debt. (Source: Oxford Dictionaries)

**Redemption Period:** Period of time that a property owner has to redeem property before the holder of the tax sale certificate may petition the court for a tax title deed.

The period for redemption of real property on which the Board of County Commissioners acquires a lien under Indiana Code 6-1.1-24-6; and for which the certificate of sale is not sold under Indiana Code 6-1.1-24-6.1 is one hundred twenty (120) days after the date the Board of County Commissioners acquires the lien under Indiana Code 6-1.1-24-6. (Indiana Code 6-1.1-25-4)

**Redemption Price:** The amount required to be paid by the property owner to redeem the property sold for delinquent taxes.

The total amount required for redemption includes:

- (1) one hundred ten percent (110 percent) of the minimum bid for which the tract or real property was offered at the time of sale, as required by Indiana Code 6-1.1-24-5, if the tract or item of real property is redeemed not more than six (6) months after the date of sale; or

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- (2) one hundred fifteen percent (115 percent) of the minimum bid for which the tract or real property was offered at the time of sale, as required by Indiana Code 6-1.1-24-5, if the tract or item of real property is redeemed more than six (6) months but not more than one year after the date of sale.

(Indiana Code 6-1.1-25-2)

**Tax Title Deed:** After the expiration of the redemption period, but not later than six months after the expiration of the period of redemption the holder of the tax sale certificate may file a verified petition in the court and under the same cause number in which the judgment of sale was entered asking the court to direct the county auditor to issue a tax deed if the real property is not redeemed from the sale. (Indiana Code 6-1.1-25-4.6)

General Overview of Post-Tax Sale Process

A county may by Indiana statute hold a tax sale on real properties that have delinquent taxes. If the properties are not sold at tax sale the county receives a tax sale certificate that represents a tax lien on the property.

The county may sell the tax sale certificates and issue the certificate of sale to the purchaser. The certificate of sale represents a tax lien. A property owner may redeem the property for which a certificate of sale has been issued, by paying all of the taxes and other charges on the property within the redemption period. If the property is not redeemed within the redemption period, the county or purchaser of the certificate of sale may petition the court for a tax title deed. The county may sell the real property and apply the proceeds to the delinquent taxes and other charges.

Sequence of Events

The following is a sequence of events regarding the disposition of property that remained unsold after the 2010 tax sale held on October 4, 2010:

1. The County, through a contract with SRI, Inc., held a tax sale on October 4, 2010. At the conclusion of the sale, 183 properties remained unsold. The Board of County Commissioners acquired a lien on each of the properties documented by a tax sale certificate issued by the County Auditor.
2. On October 14, 2010, Janet Hurst, County Treasurer, and Joe Edwards, SRI, Inc., Tax Sale Contractor, appeared before the Board of County Commissioners stating that approximately \$1,976,408 of taxes were still due on the 183 properties and proposed selling the liens through an internet auction. The Board of County Commissioners tabled action on the proposal until C. Gregory Fifer, County Attorney, could review the list of properties.
3. The minutes of the Board of County Commissioners dated October 28, 2010, state that C. Gregory Fifer provided a list to the Board of County Commissioners with a recommendation that the Board of County Commissioners implement separate collection procedures for 50 of the 183 properties. The remaining properties with tax sale certificates were to be sold at a public auction conducted by SRI, Inc. (excluding any properties with errors or redemptions prior to the proposed auction).

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The original list of properties (Exhibit "A") provided to the Board of County Commissioners at the October 28, 2010 meeting listed the 50 properties selected by C. Gregory Fifer.

4. On December 9, 2010, the Board of County Commissioners entered into a contract with C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP) through an addendum to the County Attorney's contract that states in part the following in regards to services and compensation:

Section 1 states in part: "The Attorney shall provide the necessary services to fully exercise this Board's interests pursuant to the tax sale certificates issued for the properties listed on Exhibit "A" . . . with respect to the provisions of Ind. Code 6-1.1-24-1, *et seq.*, including without limitation, obtaining title reports, issuing notice of redemption rights to all persons claiming a substantial interest in any such property . . . assisting the County Auditor in processing all timely redemption requests, filing a petition and obtaining an order for the issuance of a tax title deed if not timely redeemed, . . ."

Section 3(a) of the contract states in part: "The Attorney shall be entitled to file a claim for title search costs in the amount of \$250, and attorney fee costs associated with giving notice of redemption rights in the amount of \$350 . . ."

Section 3(b) of the contract states in part: "In addition to the amount provided in Section 3(a) above, and with respect to all properties on attached Exhibit "A" that are subsequently redeemed, the Attorney shall be paid on a contingency fee basis as follows:

- i. For properties redeemed prior to the date on which the Board is entitled to the issuance of a tax title deed, an amount of ten percent (10.00%) of the total redemption amount paid."

Section 3(c) of the contract states in part: "In addition to the amount provided in Section 3(a) above, and with respect to all properties listed on attached Exhibit "A" that are not subsequently redeemed and for which the Board obtains a tax title deed, the Attorney shall be paid on a contingency fee basis as follows:

- i. Upon the subsequent conveyance of such property to any third party . . . an amount equal to 10% of the gross sale price paid . . ."

Procedures Used by C. Gregory Fifer/AFP to Collect Delinquent Taxes

Based on our review of financial activity, the following is a summary of the procedures used by C. Gregory Fifer/AFP to collect delinquent taxes, penalties and interest on properties not sold at the 2010 tax sale:

- a. Mailing notices to property owners informing them of their right to redeem the properties at the full redemption price.
- b. Responding to property owners regarding the redemption of properties.
- c. Selling County liens (tax sale certificates) on properties.
- d. Selling properties after County received a tax title deed.

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**DEPOSIT AND UNTIMELY REMITTANCE OF NEGOTIATED REDEMPTIONS**

C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP), County Attorney, collected delinquent property taxes by negotiating the redemption price on certain properties. Based on information provided by C. Gregory Fifer, these monies were deposited in a trust account administered by C. Gregory Fifer/AFP and were not deposited in an account controlled by the County Treasurer.

A comparison of the dates monies were collected by C. Gregory Fifer/AFP and the dates these monies were remitted to the County Treasurer showed the collections were also not timely remitted to the County Treasurer.

Taxpayer ID No.	Amount	Negotiated Redemptions		(1) Days Held
		Date Received By AFP	Date Remitted to County	
019-40-0020	\$ 1,000	03-29-11	06-02-11	65
019-40-0020	1,500	05-02-11	06-02-11	31

Note to Schedule:

(1) Days held were not adjusted for weekends and holidays unless the monies were held less than 10 days.

The untimely remittances resulted in collections not being recorded timely on the individual property owner's account on the tax duplicate. The tax duplicate is the accounting record used to track property tax payments made by property owners.

Monies received from the redemption of property are required to be received by the County Treasurer based on Indiana Code 6-1.1-25-1 which states in part: "Any person may redeem the tract or real property . . . at any time before the expiration of the period of redemption specified in section 4 of this chapter by paying to the county treasurer the amount required for redemption . . ."

**DEPOSIT AND UNTIMELY REMITTANCE OF COUNTY TAX LIENS SOLD**

C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP), County Attorney, collected delinquent property taxes by selling county tax liens (certificates of sale) (see Examination Result and Comment titled: "Sale of County Tax Liens"). Based on information provided by C. Gregory Fifer, these monies were deposited in a trust account administered by C. Gregory Fifer/AFP and were not deposited in the county treasury.

A comparison of the dates monies were collected by C. Gregory Fifer/AFP and the dates these monies were remitted to the County Treasurer showed the collections were also not timely remitted to the County Treasurer.

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Sale of Certificates of Sale				
Taxpayer ID No.	Amount	Date Received By AFP	Date Remitted to County	(1) Days Held
021-18-0090	\$ 11,686.39	04-13-11	04-27-11	14
021-18-0050	16,210.13	04-13-11	04-27-11	14
014-82-0400	16,143.61	04-13-11	04-27-11	14
014-03-0021	11,442.45	04-13-11	04-27-11	14
019-41-0530 & 019-41-0540	10,000.00	04-08-11	10-14-11	189
019-41-0530 & 019-41-0540	10,000.00	05-18-11	10-14-11	149
019-41-0530 & 019-41-0540	68,582.00	10-06-11	10-14-11	5

Note to Schedule:

(1) Days held were not adjusted for weekends and holidays unless the monies were held less than 10 days.

Monies received from the sale of certificates of sale are required to be received by the County Treasurer based on Indiana Code 6-1.1-24-6.4(a) which states in part: "When a certificate of sale is sold under this chapter, the purchaser at the sale shall immediately pay the amount of the bid to the county treasurer. . . ."

The treasurer is the financial officer of the county and, as such, is vested with the authority and is charged with the duty of collecting all taxes and assessments which are payable to the county, pursuant to statute. (Accounting and Uniform Compliance Guidelines Manual for County Treasurers of Indiana, Chapter 6)

All documents and entries to records should be done in a timely manner to ensure that accurate financial information is available to allow the governmental unit to make informed management decisions and to help ensure compliance with IC 5-15-1-1 et seq., commonly referred to as the Public Records Law. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

**PROCEEDS FROM SALE OF PROPERTY NOT RECEIPTED TO FINANCIAL RECORDS**

The County obtained a tax title deed on property identified as Key No. 10-20-00-201-529.000-010. On December 21, 2011, the Board of County Commissioners signed Resolution No. 10-2011 authorizing the sale of this property to the City of Jeffersonville. The Resolution stated that the City had offered the sum of \$210,000.00 for the transfer of the real estate to the City.

The purchase price of \$210,000 was paid directly to C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP), who deposited the proceeds into their law firms trust account. The proceeds from the sale were received by C. Gregory Fifer/AFP on January 6, 2012. C. Gregory Fifer/AFP was to remit the net proceeds from the sale in the amount of \$182,500 (sale price of \$210,000, less 10 percent commission of \$21,000, and less appraisal fee of \$6,500) to the County.

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An inspection of the County's financial records showed that \$75,023.03 was recorded as received by the County Treasurer on January 10, 2012. This payment was applied to the taxes owed on the property. C. Gregory Fifer presented information showing this amount was paid from AFP's trust account using check number 3248, dated January 6, 2012, and was made payable to the Clark County Treasurer. However, the County's financial records did not show the receipt of the remaining \$107,476.97 that represented the sale proceeds in excess of the taxes owed on the property. Two separate payments were made so that one payment would be applied to taxes owed, which is subsequently distributed to various government units; while the other payment was money belonging only to the County.

C. Gregory Fifer/AFP presented information that showed check number 3251, dated January 6, 2012, was written from AFP's trust account in the amount of \$107,476.97, and was made payable to Clark County. C. Gregory Fifer stated that AFP's records showed that the check was still outstanding and had not been processed through AFP's bank account

C. Gregory Fifer and Alan M. Applegate of AFP stated the following in a written response dated December 5, 2013, regarding the check written by their law firm to the County in the amount of \$107,476.97:

"Ed Meyer, president of the Board of Commissioners, attended and executed documents at the closing, and directed AFP to deliver the County's check to the Commissioner's office with the closing transcript. We confirmed delivery of such check and transcript by our hand delivered letter initially dated January 9, 2012 . . . We cannot explain the handling (or mishandling) of the check following delivery to our client."

Marjorie Jenkins, Highway Clerk, and Christy James, Secretary to the Board of Commissioners, stated the following on February 6, 2014:

"We do not recall any monies or sales documents from Alan M. Applegate or a representative of the Law Firm of Applegate, Fifer, Pulliam for the redemption or sale of property from the Commissioners 2010 Post-Tax Sale. Any monies received in the Commissioner's Office are recorded on a report of collection form and remitted to the County Auditor when received. Official receipts are not in use for this office."

Unless fees are being collected by a County office or department to facilitate the collection process, monies other than fees should be paid to the County Treasurer.

Indiana Code 36-2-10-9 states in part: "The treasurer shall receive money to which the county is entitled . . ."

In regards to the monies collected by a County office or department, internal controls should be established to account for monies received and to ensure that monies received are properly remitted to the County Treasurer.

Receipts shall be issued and recorded at the time of the transaction; for example, when cash or a check is received, a receipt is to be immediately prepared and given to the person making payment. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

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Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

After discussing the unrecorded payment with C. Gregory Fifer, a replacement check, number 3670, was issued by AFP in the amount of \$107,476.97. The County Auditor issued Receipt No. 035182, dated December 6, 2012, for \$107,476.97. (See Summary of Charges, page 32)

**NEGOTIATED REDEMPTIONS**

C. Gregory Fifer/ Applegate, Fifer and Pulliam (APF), County Attorney, negotiated the redemption price on properties with delinquent taxes that were not sold at the October 4, 2010 tax sale. As a result, the County received a redemption amount that was \$4,789.00 less than the redemption amount specified by Indiana Code 6-1.1-25-2(b) as shown in the following schedule:

<u>Key Number</u>	<u>Amount Due At Redemption Less Attorney Fee</u>	<u>Payment to Treasurer by Taxpayer</u>	<u>Amount Collected by AFP</u>	<u>Difference</u>
014-53-0770	\$ 14,166.76	\$ (1,857.45)	\$ (11,106.32)	\$ (1,202.99)
014-78-0510	17,732.23	(2,249.57)	(14,136.72)	(1,345.94)
019-02-0130	17,697.53	-	(17,176.53)	(521.00)
021-63-0181	14,226.70	(1,027.00)	(11,798.61)	(1,401.09)
019-40-0020	9,267.75	(495.92)	(8,453.85)	<u>(317.98)</u>
Total				<u>\$ (4,789.00)</u>

Indiana Code 6-1.1-25-2(b) states in part:

". . . the total amount required for redemption includes:

1. One hundred ten percent (110%) of the minimum bid for which the tract or real property was offered at the time of sale, as required by IC 6-1.1-24-5, if the tract or item of real property is redeemed not more than six (6) months after the date of sale; or
2. One hundred fifteen percent (115%) of the minimum bid for which the tract or real property was offered at the time of sale, as required by IC 6-1.1-24-5, if the tract or item of real property is redeemed more than six (6) months but not more than one (1) year after the date of the sale."

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The minimum bid as described in Indiana Code 6-1.1-25-5(b) is further described in Indiana Code 6-1.1-24-5 is as follows:

Indiana Code 6-1.1-24-5(e) states in part:

". . . a tract or an item of real property may not be sold for an amount which is less than the sum of:

- (1) The delinquent taxes and special assessments on each tract or item of real property;
- (2) The taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, regardless of whether the taxes and special assessments are delinquent;
- (3) All penalties which are due on the delinquencies;
- (4) The amount . . . costs incurred by the county due to the sale;
- (5) Any unpaid costs due . . . from a prior tax sale; and
- (6) Other reasonable expenses of collection, including title search expenses, uniform commercial code expenses, and reasonable attorney's fees incurred by the date of the sale."

No information was presented for examination that negotiated redemption amounts were approved by any County official or officer. The contract between the Board of County Commissioners and C. Gregory Fifer/AFP did not include a provision authorizing the negotiating of redemptions amounts paid. Correspondence between C. Gregory Fifer/AFP stated that the negotiated redemption amount was approved by the Board of County Commissioners; however, no written documentation was presented for examination that the Board of County Commissioners approved the negotiated redemption amounts paid. No documentation was presented for examination that negotiated redemption amounts were approved at a public meeting and recorded in the minutes.

A Certificate of Error form on file in the County Auditor's Office was used to document the write-off of property taxes and other charges not collected on the property. Some of the Certificates of Error included a note stating "Fifer/Applegate Instructed." Other Certificates of Error presented noted "Commissioners Sale." An official in the County Auditor's Office stated this notation was entered when AFP instructed them to remove a portion of the property taxes, penalties, or costs.

Indiana Code 5-14-1.5-4(b) states in part:

"As the meeting progresses, the following memoranda shall be kept: . . .

- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call."

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Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

**SALE OF COUNTY TAX LIENS**

C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP), County Attorney, collected delinquent property taxes by selling county tax liens (certificates of sale) on six properties. C. Gregory Fifer/AFP received a fee of 10 percent of the proceeds from the sale of the tax liens totaling \$18,919.30. The contract between the Board of County Commissioners and C. Gregory Fifer/AFP did not provide for the C. Gregory Fifer/AFP to collect delinquent taxes on properties by selling certificates of sale. The contract provided for the following services for the collection of delinquent taxes:

1. Section 3(a) of the contract states in part: "The Attorney shall be entitled to file a claim for title search costs in the amount of \$250, and attorney fee costs associated with giving notice of redemption rights in the amount of \$350 . . ."

2. Section 3(b) of the contract states in part:

"In addition to the amount provided in Section 3(a) above, and with respect to all properties on attached Exhibit "A" that are subsequently redeemed, the Attorney shall be paid on a contingency fee basis as follows:

- i. For properties redeemed prior to the date on which the Board is entitled to the issuance of a tax title deed, an amount of ten percent (10.00%) of the total redemption amount paid."

3. Section 3(c) of the contract states in part:

"In addition to the amount provided in Section 3(a) above, and with respect to all properties listed on attached Exhibit "A" that are not subsequently redeemed and for which the Board obtains a tax title deed, the Attorney shall be paid on a contingency fee basis as follows:

- i. Upon the subsequent conveyance of such property to any third party . . . an amount equal to 10% of the gross sale price paid . . ."

Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

C. Gregory Fifer/AFP negotiated the sale of the six (6) certificates of sale. No publication of a notice of the sale was made. Accordingly, there was no public bidding for these certificates of sale.

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The following is a comparison of the sale price and the redemption price in total for the six properties:

Redemption price	\$ 176,856.19
Sale price	<u>(173,692.58)</u>
Variance	<u>\$ 3,163.61</u>

Indiana Code 6-1.1-24-6.1 states in part the following:

"(a) The county executive may do the following:

- (1) By resolution, identify properties . . . which the county executive desires to offer to the public the certificates of sale acquired by the county executive under section 6 of this chapter.
  - (2) In conformity with IC 5-3-1-4, publish:
    - (A) notice of the date, time, and place for a public sale; and
    - (B) a listing of parcels on which certificates will be offered by parcel number and minimum bid amount; once each week for three (3) consecutive weeks, with the final advertisement being not less than thirty (30) days before the sale date. The expenses of the publication shall be paid out of the county general fund.
  - (3) Sell each certificate of sale covered by the resolution for a price that:
    - (A) is less than the minimum sale price prescribed by section 5(e) of this chapter; and
    - (B) includes any costs to the county executive directly attributable to the sale of the certificate of sale.
- (b) Notice of the list of properties prepared under subsection (a) and the date, time, and place for the public sale of the certificates of sale shall be published in accordance with IC 5-3-1 . . ."

**UNNECESSARY COSTS ON PROPERTIES REDEEMED PRIOR TO NOTICES**

On December 9, 2010, the Board of County Commissioners entered into a contract with C. Gregory Fifer, County Attorney/Applegate, Fifer, Pulliam, LLC (AFP), to proceed on the collection of 50 properties that remained unsold at the previous tax sale. Included in the properties assigned to C. Gregory Fifer/AFP were 3 properties that were redeemed by the property owner prior to the contract date and prior to C. Gregory Fifer/AFP sending the notice titled "Notice of Acquisition of Real Property Tax Lien and Certificate of Sale following Tax Sale and Right to Redeem Real Property." This notice informed the property owner that the County had acquired a lien to their property, and if the delinquent taxes were not paid within the redemption period of 120 days, the County intended to petition for a tax deed for the described property. C. Gregory Fifer/APF billed the County for these costs in the amount of \$3,610.54 as shown in the following schedule:

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<u>Key Number</u>	<u>Notes</u>	<u>Date of Redemption</u>	<u>Attorney and Title Search Fees</u>	<u>10% Collection Fees</u>	<u>Totals</u>
10-21-03-300-082.000-009	(1) (3)	10-21-10	\$ 600.00	\$ 633.19	\$1,233.19
10-21-03-300-081.000-009	(1) (3)	10-21-10	600.00	1,057.85	1,657.85
10-14-01-801-538.000-012	(2) (3)	11-23-10	<u>600.00</u>	<u>119.50</u>	<u>719.50</u>
Totals			<u>\$ 1,800.00</u>	<u>\$1,810.54</u>	<u>\$3,610.54</u>

Note to Schedule:

- (1) The notices, titled "Notice of Acquisition of Real Property Lien and Certificate of Sale Following Tax Sale and Right to Redeem Real Property," were mailed to the property owner and lien holders on December 15, 2010, via certified mail or 55 days after the date of redemption. The notices were prepared by C. Gregory Fifer/AFP.
- (2) The notices, titled "Notice of Acquisition of Real Property Lien and Certificate of Sale Following Tax Sale and Right to Redeem Real Property," were mailed to the property owner and lien holders on December 17, 2010, via certified mail or 24 days after the date of redemption. The notices were prepared by C. Gregory Fifer/AFP.
- (3) We requested information from C. Gregory Fifer to document title search costs that C. Gregory Fifer/APF paid on the various properties he was assigned to service under the contract with the County. C. Gregory Fifer presented information that provided a listing of invoices from Southeastern Indiana Title Company. The information presented showed the earliest invoice was dated December 1, 2010, or 41 days after the October 21, 2010 redemption date and 24 days after the November 23, 2010 date.

The property owners paid the amount in the above schedule to the County Treasurer. The properties were redeemed prior to the contract date of December 9, 2010, and redeemed prior to the property owner being notified by C. Gregory Fifer/AFP of the redemption period. Accordingly, no evidence was presented for examination that the redemptions paid by the property owners were related to the services performed by C. Gregory Fifer/AFP.

Payments made for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Governmental units should collect any overpayments made. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

BOARD OF COUNTY COMMISSIONERS  
2010 POST-TAX SALE  
CLARK COUNTY  
AUDIT RESULTS AND COMMENTS  
(Continued)

***UNNECESSARY COSTS AND FINANCIAL LOSS ON INVALIDATION  
OF CERTIFICATE OF SALE PREVIOUSLY SOLD***

The County incurred unnecessary cost and a financial loss totaling \$5,166.15 when the sale of a certificate of sale (county tax lien) was invalidated and redemption of property was allowed on the same property as described below:

1. A piece of property identified as Key No. 10-21-03-300-068.000-009 was included on the list of Certificates of Sales that SRI, Inc. , was to sell at public auction per their agreement signed by the Board of County Commissioners on November 10, 2010.

The Certificate of Sale was sold on March 14, 2011, in the amount of \$25,010.00. The County paid a 10 percent collection fee in the amount of \$2,500.10.

2. A piece of property identified as Key No. 10-21-03-300-068.000-009 was also included on Exhibit "A" of the contract addendum between the Board of County Commissioners and the C. Gregory Fifer/AFP for the collection of delinquent taxes.
3. C. Gregory Fifer/APF entered into a negotiated redemption agreement with the property owner. The property owner redeemed the property on May, 10, 2011, by paying \$14,000.00. The delinquent taxes, penalties, and interest owed on the property were \$15,064.66 resulting in \$1,064.66 of taxes and other charges being subsequently written off.
4. The redemption period, based on Indiana Code 6-1.1-25-4(b), expired February 1, 2011. The negotiated redemption agreement also occurred after the certificate of sale had been sold on March 14, 2011.
5. When C. Gregory Fifer/AFP discovered that the certificate of sale on this property had been previously sold by SRI, Inc., C. Gregory Fifer instructed the County Auditor to declare the sale of the certificate of sale to be invalid and to refund the purchaser of the certificate of sale the amount paid.

Because the negotiated redemption on the property occurred after the redemption period ended and occurred after the certificate of sale on the same property was sold, the County incurred unnecessary costs and a financial loss in the amount of \$5,166.05 as shown below:

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 AUDIT RESULTS AND COMMENTS  
 (Continued)

Description	Unnecessary Costs	Financial Loss	Totals
Duplicate 10% collection fee (1)	\$ 1,363.02	\$ -	\$ 1,363.02
Interest paid (2)	238.37	-	238.37
10% penalty on sale of certificate (3)	-	2,500.10	2,500.10
Uncollected taxes and charges written off	-	1,064.66	1,064.66
<b>Totals</b>	<b><u>\$ 1,601.39</u></b>	<b><u>\$ 3,564.76</u></b>	<b><u>\$ 5,166.15</u></b>

Notes to Schedule:

- (1) This is the actual amount withheld by C. Gregory Fifer/APF from the collections remitted to the County for his fees. This amount is in addition to the \$2,500.10 fee paid to SRI, Inc., for the sale of the certificate of sale.
- (2) Interest paid to purchaser of certificate of sale due to invalidation of sale.
- (3) County is entitled to retain a 10 percent penalty from the proceeds of a certificate of sale.

By invalidating the sale of the certificate of sale for Key No. 10-21-03-300-068.000-009, the County incurred duplicate collection fees; interest costs; did not received the statutory penalty, and did not collect the minimum redemption price on the property as required by Indiana Code 6-1.1-25-2 when a certificate of sale is sold.

Indiana Code 6-1.1-25-2 states in part the following in regards to the redemption price when a certificate of sale is sold:

"(a) The total amount of money required for the redemption of real property equals . . . the amount prescribed in subsection (f) . . .

(f) With respect to a tract or item of real property redeemed under section 4(c) of this chapter, instead of the amounts stated in subsections (b) through (e), the total amount required for redemption is the amount determined under IC 6-1.1-24-6.1(b)(4)."

Indiana Code 6-1.1-24-6.1 states in part:

"(b) Notice of the list of properties prepared . . . for the public sale of the certificates of sale shall be published in accordance with IC 5-3-1. The notice must . . .

- (4) include a statement that a person redeeming each tract or item of real property after the sale of the certificate must pay:
  - (A) the amount of the minimum bid under section 5(e) of this chapter for which the tract or item of real property was last offered for sale;

BOARD OF COUNTY COMMISSIONERS  
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AUDIT RESULTS AND COMMENTS  
(Continued)

(B) ten percent (10%) of the amount for which the certificate is sold . . .

(E) all taxes and special assessments on the tract or item of real property paid by the purchaser after the sale of the certificate plus interest at the rate of ten percent (10%) per annum on the amount of taxes and special assessments paid by the purchaser on the redeemed property . . ."

Indiana Code 6-1.1-24-5(e) states:

"The county treasurer shall sell the tract or real property, subject to the right of redemption, to the highest bidder at public auction. However, a tract or an item of real property may not be sold for an amount which is less than the sum of:

- (1) the delinquent taxes and special assessments on each tract or item of real property;
- (2) the taxes and special assessments on each tract or item of real property that are due and payable in the year of the sale, regardless of whether the taxes and special assessments are delinquent;
- (3) all penalties which are due on the delinquencies;
- (4) the amount prescribed by section 2(a)(3)(D) of this chapter reflecting the costs incurred by the county due to the sale;
- (5) any unpaid costs which are due under section 2(b) of this chapter from a prior tax sale; and
- (6) other reasonable expenses of collection, including title search expenses, uniform commercial code expenses, and reasonable attorney's fees incurred by the date of the sale."

If the property is not redeemed, the proceeds from the sale of the certificate of sale are applied to the delinquent taxes and other charges as outlined in Indiana Code 6-1.1-24-6.1.

***FINANCIAL LOSS - TITLE SEARCH AND ATTORNEY FEE COSTS***

The County obtained tax sale certificates on properties with delinquent taxes that remained unsold at the October 4, 2010 tax sale. The tax sale certificates represent County liens on properties with delinquent taxes. On December 9, 2010, the Board of County Commissioners entered into an addendum to the County Attorney's contract with C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP). Section 1 of the contract states in part the following:

"The Attorney shall provide the necessary services to fully exercise this Board's interests pursuant to the tax sale certificates issued for the properties listed on Exhibit 'A' . . ."

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AUDIT RESULTS AND COMMENTS  
(Continued)

C. Gregory Fifer/AFP billed the County and the County paid for costs associated with title search fees and attorney fees for properties that remained unsold at the October 4, 2010 tax sale. Records in the County Auditor's Office showed that costs on three properties were not certified or were not certified timely by C. Gregory Fifer/AFP. Because the costs were either not certified or were not certified timely, the County incurred a financial loss in amount of \$1,800 on the following properties:

Key Number	Date Certified by Gregory Fifer/ AFP	Date Property Redeemed by Property Owner	Date Costs Billed to County	Title Search Fees	Attorney Fees	Financial Loss
10-14-01-900-506.000-012	12-27-10	12-14-10	04-12-11	\$ 250	\$ 350	\$ 600
10-19-00-102-454.000-010	(1)	12-22-10	04-12-11	250	350	600
10-19-00-102-458.000-010	(1)	12-22-10	04-12-11	250	350	600
Totals				<u>\$ 750</u>	<u>\$ 1,050</u>	<u>\$ 1,800</u>

Note to Schedule:

(1) Costs were not certified based on records presented for examination by the County Auditor's office.

Costs for title search fees and attorney fees are required to be certified on Form 137B (Statement of Costs Paid on Tax Sale Property) prior to the date of redemption. A review of Form 137B used to certify costs on other properties (not included in the above schedule) showed these costs were certified by C. Gregory Fifer/AFP.

For the properties which costs were not certified, C. Gregory Fifer/AFP did not bill the County for title search fees and attorney costs until April 12, 2011. Due to late billing by C. Gregory Fifer/AFP, the costs for title searches and attorney fees could not be certified prior to the date the property was redeemed.

Indiana Code 6-1.1-25-2(e) states in part:

". . . the total amount required for redemption includes the following costs, if certified before redemption. . .

(1) The attorney's fees and costs of giving notice . . . .

(2) The costs of a title search or of examining and updating the abstract of title . . ."

Each governmental unit is responsible for complying with the provisions of its contracts. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

C. Gregory Fifer/AFP refunded \$700 on December 5, 2012, to Clark County for attorney fees on two properties identified in the above schedule as key number 10-19-00-102-454.000-010 and key number 10-19-00-102-458.000-010, resulting in a net loss to the County of \$1,100.

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(Continued)

**SALE OF PROPERTY**

On March 14, 2012, the County received a bid in the amount of \$500 for property located at 916 Walnut Street, Jeffersonville. The average appraised value of the property obtained by the County prior to advertising totaled \$28,000. The bid amount of \$500 was less than 90 percent of the average appraised value. A closing statement, dated July 6, 2012, was signed by Les Young, President of the Board of County Commissioners, selling the property.

No documentation was presented for examination showing that an additional public notice was published regarding the Board of Commissioners intent to sale the property at less than 90 percent of the appraised value.

Indiana Code 36-1-11-4(f) states in part: ". . . the disposing agent may sell the property for less than ninety percent (90%) of the average of the two (2) appraisals of the tracts only after an additional notice stating the amount of the bid to be accepted is published in a ccordance with IC 5-3-1."

**COUNTY ATTORNEY COMPENSATION - METHOD OF PAYMENT**

On December 9, 2010, the Board of County Commissioners entered into an addendum to the County Attorney's contract with C. Gregory Fifer/Applegate, Fifer, Pulliam, LLC (AFP). Section 1 of the contract states in part the following:

"The Attorney shall provide the necessary services to fully exercise this Board's interests pursuant to the tax sale certificates issued for the properties listed on Exhibit 'A' . . ."

There were 23 real properties where the collection of delinquent taxes (redemption of properties), the sale of certificates of sale, and the sale of real property were handled exclusively by C. Gregory Fifer/AFP. Instead of remitting the gross amount of collections to the County, C. Gregory Fifer/AFP withheld contractual fees and expenses totaling \$72,072.76 prior to remitting collections to the County. The following is a schedule of fees and reimbursements withheld by C. Gregory Fifer/AFP:

10% collection fee	\$ 63,172.76
Reimbursement for title search and attorney - notice costs	2,400.00
Reimbursement for appraisals	<u>6,500.00</u>
 Total Fees and Reimbursement Withheld from Collections	 <u>\$ 72,072.76</u>

The deduction of the 10 percent collection fee and reimbursement for costs from gross collection proceeds resulted in the following:

1. The entire financial activity related to the collection of monies and associated costs were not recorded on the financial records of the County.

Indiana Code 36-2-10-9 states: "The treasurer shall receive money to which the county is entitled and shall disburse it on warrants issued and attested by the county auditor."

2. Payments to C. Gregory Fifer/AFP were not subject the statutory claim process which requires County expenditures to be approved, audited, and allowed.

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AUDIT RESULTS AND COMMENTS  
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Indiana Code 5-11-10-1.6 states in part:

"(b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;
- (2) the invoice or bill is approved by the officer or person receiving the goods and services;
- (3) the invoice or bill is filed with the governmental entity's fiscal officer;
- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and
- (5) payment of the claim is allowed by the governmental entity's legislative body or the board or official having jurisdiction over allowance of payment of the claim."

Indiana Code 36-2-6-2 states: "A person who has a claim against a county shall file an invoice or a bill with the county auditor. The auditor shall present the invoice or bill to the executive, which shall examine the merits of the claim. The executive may allow any part of the claim that it finds to be valid."

Disbursements shall be by check or warrant, not by other methods unless specifically authorized by statute, federal or state rule. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control.

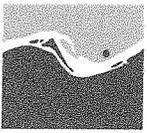
Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Counties of Indiana, Chapter 1)

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EXIT CONFERENCE

The contents of this report were discussed on November 5, 2013, with C. Gregory Fifer, former County Attorney and Attorney with Applegate, Fifer, Pulliam, LLC, and Alan M. Applegate, Attorney with Applegate, Fifer, Pulliam, LLC. The Official Response has been made a part of this report and may be found on pages 22 to 30.

The contents of this report were discussed on November 6, 2013, with M. Edward Meyer, former President of the Board of County Commissioners, and Jill W. Oca, CPA. The Official Response has been made a part of this report and may be found on page 31.

The contents of this report were discussed on November 7, 2013, with Jack Coffman, President of the Board of County Commissioners; Barbara Hollis, President of the County Council; Brian Lenfert, Council member; R. Monty Snelling, Auditor; and David Reinhardt, Treasurer; Jake Elder, County Attorney, and Jill W. Oca, CPA.



February 13, 2014

C. Gregory Fifer  
[gfifer@afpfirm.com](mailto:gfifer@afpfirm.com)

Ms. Karen S. Kelleher, Acting Field Supervisor  
INDIANA STATE BOARD OF ACCOUNTS  
302 W. Washington Street  
Room E418  
Indianapolis, IN 46204-2765

**Personal Delivery**

Re: Clark County 2010 Tax Sale

Dear Ms. Kelleher:

We write to acknowledge receipt of the revised *Audit Results and Comments for the 2010 Post-Tax Sale* (hereinafter referred to as the "Audit") by your e-mail of February 10, 2014. We appreciate the opportunity to submit this response, which is as follows:

**1. Deposit and Untimely Remittance of Negotiated Redemptions (Page 4).**

The Audit asserts that our firm ("AFP") made untimely remittances of two payments received from DTS Properties (Key No. 019-40-0020) (AFP Asset 21). These payments were made pursuant to agreement dated March 28, 2011, a copy of which is enclosed as Exhibit "1". The Commissioners authorized this agreement as the property in question was in the process of being sold by the owner to a third party. As noted in the agreement, the time in which the owner could redeem by right had expired, and the Commissioners then had the absolute right to seek a tax deed to this property.<sup>1</sup> The agreement requiring payment of the full redemption amount was consistent with our general instructions from the Commissioners to allow property owners to keep their properties, provided that they brought the delinquent taxes current within a reasonable period of time. The partial payments were required as a good faith deposit pending the closing. The closing occurred on May 31, 2011, and we delivered the full amount of the past due taxes promptly thereafter. It was, and remains, our legal opinion that partial payments should not have been made to the Treasurer in order to fully preserve the County's right to obtain a tax deed for the subject property pending receipt of full payment of the delinquent taxes, and to avoid equitable arguments of accord, satisfaction, waiver, and estoppel in the event that such full payment was not ultimately made.

Based on the foregoing, we believe our actions to have been legally appropriate and in the best interests of our client.

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<sup>1</sup> Ind. Code § 6-1.1-25-4(b) provides that the period for redemption of real property on which the county executive acquires a lien is one hundred twenty (120) days after the county executive acquired the lien. We believe the Audit's citation to Ind. Code § 6-1.1-25-1 without proper reference to this limiting provision in Subsection 4(b) to be erroneous.

**2. Deposit and Untimely Remittance of County Tax Liens Sold (Page 4).**

The Audit claims that funds from the assignment of tax sale certificates held by the Commissioners to third parties were required to be paid directly to the Treasurer pursuant to Ind. Code § 6-1.1-24-6.4(a). We believe this section properly applies only to an initial tax sale held pursuant to Ind. Code § 6-1.1-24-6.1, or a subsequent Commissioners' certificate sale, neither of which apply to the tax sale certificates at issue.

As an initial matter, we would note that the tax sale statutes provide detailed guidance regarding the procedural requirements prior to the expiration of the applicable redemption period and after the issuance of a tax deed. The tax sale statutes do not provide the same level of guidance regarding the procedural requirements between such dates. As such, AFP attempted to interpret and apply the tax sale statutes regarding these negotiated redemptions and certificate assignments in a manner that both comported with the statutes and was consistent with our general instructions from the Commissioners.<sup>2</sup>

Ind. Code § 6-1.1-24-6(b) expressly provides that a county executive has the same rights as a tax sale certificate purchaser after it acquires a tax sale certificate. Ind. Code § 6-1.1-24-9(c) further expressly provides that a tax sale certificate is assignable. The Commissioners were therefore clearly acting within the scope of their statutory authority in making these assignments. Furthermore, it is again imperative to note that all of the tax sale certificates at issue were redeemed or assigned after the one hundred twenty (120) day statutory redemption period had expired.

The Audit further claims that funds from such assignments were not timely remitted by AFP to the County. For the first four (4) parcels listed in the Audit, it is claimed that AFP did not disburse funds to the County for a period of fourteen (14) days following receipt. AFP deposited such funds into a trust account maintained in accordance with the safekeeping requirements of Indiana Rules of Professional Conduct, Rule 1.15. AFP was ethically required to hold these funds its trust account until it could be verified that the deposited checks had cleared.

With respect to the final three (3) entries of the Audit table, these pertain to properties owned by Barbara Jean Sandefur (Key Nos. 019-41-0530 and 019-41-0540) (AFP Assets 23-24). Enclosed as Exhibit "2" are documents relevant to these parcels consisting of the following:

- AFP's letter dated September 2, 2011, to an attorney retained by the contract vendee to contest the petition for issuance of tax deed that AFP had filed on behalf of the County. The offer tendered by this letter was not accepted by the contract vendee.

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<sup>2</sup> See response in Section 1 above. From the initial retainer of AFP to perform the scope of work within this representation, the Commissioners' collective instructions were to focus on collection of the full delinquent tax amounts, thereby allowing owners to retain their properties. It was never the primary objective of the Commissioners to obtain title to the properties by tax deed.

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- Documents utilized by AFP to calculate the amounts claimed as due in its September 2, 2011, letter.
- Order directing the issuance of the tax deed to the County entered on September 7, 2011.
- Motion for relief from the order for issuance of the tax deed filed by the contract vendee on September 13, 2011.
- Agreed order entered on September 26, 2011, pursuant to which the contract vendee made the payments received and disbursed by AFP.

The Audit erroneously equates these assignments to the Commissioners' certificate sale subsequently that was conducted by SRI by auction sale pursuant to Resolution No. 13-2010 enclosed as Exhibit "3" (despite the risk that such assignments were made without assurance that the full delinquent amount would be received). As such, we believe that the Commissioners acted appropriately in assigning the certificates referenced in the Audit upon full payment of the delinquent tax amounts due.

Based on the foregoing, we again believe our actions to have been legally appropriate and in the best interests of our client in all respects.

**3. Proceeds from Sale of Property Not Receipted to Financial Records (Page 5).**

The Audit erroneously states that the "... proceeds from the sale were received by Gregory Fifer/AFP on January 6, 2012." In fact, AFP received funds by bank wire to enable the sale on this date as required by Ind. Code § 27-7-3.7, *et seq.* The closing of the sale of this property occurred on January 6, 2012, as evidenced by the settlement statement enclosed as Exhibit "4". Checks were cut at the closing as shown on the settlement statement, including the check for \$107,476.97 to Clark County enclosed as Exhibit "5". Ed Meyer, the president of the Board of Commissioners, attended and executed documents at the closing, and directed AFP to deliver the County's check to the Commissioners' office with the closing transcript. We confirmed delivery of such check and transcript by our hand-delivered letter initially dated January 9, 2012, enclosed as Exhibit "6". We cannot explain the handling (or mishandling) of the check following delivery to our client.

The Audit further states that "[u]nless fees are being collected by a County office or department to facilitate the collection process, monies other than fees should be paid to the County Treasurer. It is our steadfast belief that AFP was, in fact, providing services to facilitate the collection process of delinquent taxes on behalf of, and as expressly instructed by, the County executive.

4. Negotiated Redemptions (Page 7).

The Audit initially asserts that "... the County received a redemption amount that was \$4,789.00 less than the minimum redemption amount specified by Indiana Code 6-1.1-25.2(b) ...". We believe this statute to be wholly inapplicable to the tax sale certificates acquired by the Commissioners, particularly to the extent that it is cited as authority for the proposition that interest was to accrue at 115% of the minimum bid amount if redeemed more than six (6) months after the date of the sale. We believe the properly controlling and/or limiting statute regarding this issue to be Ind. Code § 6-1.1-25-4(b), which provides that the period for redemption of real property on which the county executive acquires a lien is one hundred twenty (120) days after the county executive acquired the lien. The 2010 Clark County Tax Sale was held on October 4, 2010, and certificates were issued to the Commissioners on October 5, 2010. The redemption period for these certificates therefore expired on February 2, 2011. After such date, the Commissioners were not in any manner dealing with redemptions as a matter of right, but rather whether to either (i) pursue the issuance of tax deeds for the unredeemed properties, or (ii) forego seeking or obtaining such deeds pursuant to other procedures prescribed by the tax sale statutes. *See also*, Ind. Code § 6-1.1-24-6.

Enclosed are the following:

- Exhibit "7" is the agreement and supporting documentation with Charles VanWinkle dated April 15, 2011, for the negotiated (i.e., non-mandatory) redemption of 1021/2 W. Maple Court, Clarksville, Indiana (Key No. 014-53-0770) (AFP Asset No. 8) and 414 E. Beckett Street, Clarksville, Indiana (Key No. 014-78-0510) (AFP Asset No. 10).
- Exhibit "8" is a letter from the attorney retained to contest the County's petition for issuance of tax deed by the owner, James Mull, dated May 4, 2011, confirming the negotiated redemption of 1516 Clairview Drive, Jeffersonville, Indiana (Key No. 019-020-0130) (AFP Asset No. 17), together with the supporting documentation for the calculation of the delinquent amounts due.
- Exhibit "9" is documentation regarding the negotiated (i.e., non-mandatory) redemption by the owner's brother, Rick Jones, for of 1819 Charlestown-New Albany Road, Jeffersonville, Indiana (Key No. 021-63-0181) (AFP Asset No. 42).
- Exhibit "10" is the agreement and supporting documentation with DTS Properties, LLC dated March 28, 2011, for the negotiated (i.e., non-mandatory) redemption of 931 Fulton Street, Jeffersonville, Indiana (Key No. 019-40-0020) (AFP Asset No. 21) (further discussed in Section 1 above).

We are unaware of any statutory authority that would have required approval of any of these negotiated redemption agreements at a public meeting as asserted in the Audit. Again, our instructions from the Commissioners consistently were that they strongly preferred obtaining payment of the delinquent taxes to taking title to the subject properties by tax deed.

Based on the foregoing, we again believe our actions to have been legally appropriate and in the best interests of our client in all respects.

**5. Sale of County Tax Liens (Page 8).**

AFP disputes the Audit's insinuation that it in any manner provided or was compensated for legal services that were not authorized under the terms of its contract addendum. This addendum conclusively established the Commissioners' finding that "... it is in the best interests of the taxpayers of Clark County to retain the Attorney pursuant to this Addendum to fully exercise the Board's rights as the holder of a tax sale certificate for each of the remaining properties ...".

AFP acknowledges that it negotiated and closed the assignment of six (6) tax sale certificates that had been acquired by the Commissioners as evidenced by the following:

- Exhibit "11" is the agreement and supporting documentation with the owner's relative, James P. Dierking, dated February 22, 2011, for the negotiated assignment of the tax sale certificate for 1127 W. Harrison Avenue, Clarksville, Indiana (Key No. 014-3-0021) (AFP Asset No. 7).
- Exhibit "12" is the agreement and supporting documentation with the owner's grandson, Aaron L. Howell, dated February 1, 2011, for the negotiated assignment of the tax sale certificate for 245 N. Oak Street, Clarksville, Indiana (Key No. 014-82-0400) (AFP Asset No. 11).
- Exhibit "13" is the agreement and supporting documentation with Marty Chalfant, dated March 31, 2011, for the negotiated assignment of the tax sale certificate for 819 Colonial Park Drive, Jeffersonville, Indiana (Key No. 021-18-0050) (AFP Asset No. 38).
- Exhibit "14" is the agreement and supporting documentation with Marty Chalfant, dated March 31, 2011, for the negotiated assignment of the tax sale certificate for 901 Colonial Park Drive, Jeffersonville, Indiana (Key No. 021-18-0090) (AFP Asset No. 39).
- Exhibit "2" referenced in Section 2 above is the court order and supporting documentation regarding the negotiated assignment of the tax sale certificates to the contract vendee of the deceased owner of 528 E. Tenth Street, Jeffersonville, Indiana (Key No. 019-41-0530) (AFP Asset No. 23), and 925 Meigs Avenue, Jeffersonville, Indiana (Key No. 019-41-0540) (AFP Asset No. 24).

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As noted above, a county executive has the same rights as a tax sale certificate purchaser after it acquires a tax sale certificate pursuant to Ind. Code § 6-1.1-24-6(b). Ind. Code § 6-1.1-24-9(c) expressly provides that a tax sale certificate is assignable on any terms deemed acceptable to the holder in its sole discretion.

We are unaware of any statutory authority that would have required publication of notice and/or public bidding for these assignments as asserted in the Audit. We believe that the Audit's citation to Ind. Code § 6-1.1-24-6.1(b) for this proposition is misplaced, as the publication required by this statute related solely to the Commissioner's sale that was conducted by SRI pursuant in March 2011 pursuant to the resolution attached as Exhibit "3" rather than any subsequent certificate assignment.

Based on the foregoing, we again believe our actions to have been legally appropriate, consistent with the instructions of our client, and in the best interests of our client in all respects.

**6. Unnecessary Costs on Properties Redeemed Prior to Notices (Page 10).**

AFP acknowledges that it collected costs and fees in accordance with its contract addendum for three (3) properties that were redeemed prior to the formal approval and execution of such addendum. The Auditor's office failed to notify AFP of such redemptions, notwithstanding AFP's substantial efforts to during the months of October and November 2010 to inform such office of the work it would be undertaking with respect to the subject properties. As the direct and proximate result of the failure of the Auditor's office to provide such notice, AFP incurred out-of-pocket costs and completed the work required to issue notices of the right to redeem each of these properties at substantial expense.

Invoices for the title work and legal services must be attached to the Form 137Bs prior to filing with the Auditor. Given such requirements, we believe that all such forms were prepared and filed in a reasonably timely manner after the formal approval of our contract addendum on December 6, 2010. The contract addendum expressly provided that AFP would be compensated for the title search costs it incurred in order to be able to issue the statutorily required redemption notices.

Based on the foregoing, AFP disputes that it charged or received any "overpayments" from the County as asserted in the Audit.

7. **Unnecessary Costs and Financial Loss on Invalidation of Certificate of Sale Previously Sold (Page 11).**

The property referenced by the Audit was that of Phyllis A. J. Stoner located at 1819 Charlestown-New Albany Road, Jeffersonville, Indiana (Key No. 021-63-0181) (AFP Asset No. 42) (further discussed in Section 4 above). AFP had secured the original tax sale certificate for this property on behalf of the Commissioners prior to its resale and/or assignment at the Commissioners' certificate sale that was subsequently conducted by SRI on March 14, 2011. (See Exhibit "9").

Attached as Exhibit "15" is the parcel list initially tendered by SRI with recommendation to include in the Commissioners' certificate sale. AFP discovered that three (3) of the listed parcels, including the subject parcel owned by Stoner, were also included in properties for which it was attempting to obtain redemption or tax deeds. AFP accordingly deleted these properties from the list for which SRI was to sell the Commissioners' certificates attached to Resolution No. 13-2010 (see enclosed Exhibit "3"). AFP cannot explain how or why SRI proceeded to sell and/or assign a subsequent certificate for this property.

The Auditor is obligated to maintain a tax sale record on the form prescribed by the State Board of Accounts, including the name and mailing address of every certificate purchaser to whom an original certificate has been issued. Ind. Code § 6-1.1-25-8(4)(B). The original certificate of sale is presumptive evidence of the interest of the purchaser in the real property described in the certificate. Ind. Code § 6-1.1-24-11(a)(2).

In order to settle the claims asserted by the second tax sale certificate holder, AFP paid her the sum of \$1,463.00 in order to obtain a release of the County from further liability as shown in the documents attached hereto as Exhibit "16". AFP did not pass this cost through to the County in any subsequent billing.

AFP believes that all of the actions it took were reasonable and appropriate as required to minimize the County's liability arising from the issuance of second "original" tax sale certificate following SRI's erroneous inclusion in the Commissioners' sale it conducted. If the County incurred needless costs as asserted in the Audit, it was not due to any erroneous act or omission of AFP.

Based on the foregoing, we again believe our actions to have been legally appropriate and in the best interests of our client in all respects.

**8. Financial Loss – Title Search and Attorney Fee Costs (Page 14).**

AFP reincorporates its comments in Section 6 above, with the exception of noting the following:

- All of our Form 137Bs referenced in this section were dated December 21, 2009 (i.e., prior to redemption the following day), but AFP has no documentation that demonstrates when these certificates were actually first presented to the Auditor's office. Given the necessity of attaching invoices for the title search costs and attorney fees associated with issuing the required redemption notices, we believe that these forms were prepared and filed within a reasonable period of time. The date that AFP billed for title search costs and attorney fees incurred in issuing the redemption notices is wholly irrelevant to the incurrence of the claimed loss to the County.
- As shown in enclosed Exhibit "17", the Auditor's office notified us promptly after the redemptions regarding properties owned by Spring Street Enterprises at 1416 Spring Street, Jeffersonville, Indiana (Key Nos. 019-52-0040 and 019-52-0060) promptly. As noted in the Audit, AFP paid the County the sum of \$700.00 to refund these charges.
- With respect to property redeemed by Sree Ganesh LLC at 607 Kopp Lane, Clarksville, Indiana (Key No. 014-84-0070) (AFP Asset No. 13), the Form 137B is dated December 13, 2009 (again, coincidentally, the day prior to redemption). However, AFP both incurred title search costs and completed the issuance of redemption notices prior to being notified of the redemption as shown in enclosed Exhibit "18".

**9. Sale of Property (Page 15).**

AFP acknowledges that the property located at 916 Walnut Street, Jeffersonville, Indiana, was inadvertently not included in the proof of publication for four (4) other properties that were disposed of in accordance with the statute referenced in the Audit enclosed as Exhibit "19".

**10. County Attorney – Method of Payment (Page 15).**

The Audit takes issue with AFP's deduction of its fees from funds collected and deposited into its trust account for the benefit of the County. Comment No. 3 to Indiana Rules of Professional Conduct, Rule 1.15, states in pertinent part as follows:

Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client, funds that the lawyer reasonably believes represent fees owed.

Ms. Karen S. Kelleher, Acting Field Supervisor  
INDIANA STATE BOARD OF ACCOUNTS  
February 13, 2014  
Page 9 of 9

Based on the foregoing, we again believe our actions to have been legally and ethically appropriate in all respects.

11. **Conclusion.**

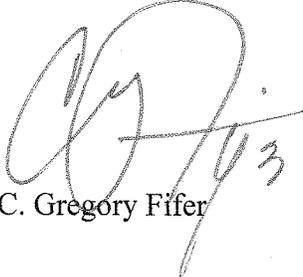
It is our understanding that the SBOA may not include the exhibits referenced in this letter within the final Audit due to their voluminous nature. As such, the public is hereby advised that a complete copy of this response has been filed in the office of the Board of Clark County Commissioners, County Government Building, Room 406, 501 E. Court Avenue, Jeffersonville, Indiana, where it will be available for inspection during regular business hours.

In closing, we would note that we take great pride in the services we provided to the County with respect to the 2010 Tax Sale and the exemplary results we obtained for its benefit as shown in the memorandum detailing such results attached hereto as Exhibit "20".

We again wish to express our gratitude for the opportunity to submit this response.

Sincerely,

**APPLEGATE FIFER PULLIAM LLC**



C. Gregory Fifer



Alan M. Applegate

CGF/lhb  
Enclosures/

Cc: Board of Clark County Commissioners (via personal delivery w/ enclosures)  
Mr. Jacob C. Elder, Clark County Attorney (via personal delivery w/ enclosures)  
Clark County Auditor (via e-mail w/o enclosures)  
Clark County Treasurer (via e-mail w/o enclosures)

*Ed Meyer*  
*132 Bluff Ridge Road*  
*Jeffersonville, IN 47130*

**March 7, 2014**

**Karen Kelleher, Acting Field Supervisor**  
**Indiana State Board of Accounts**  
**Clark County, Indiana**

**Re: 2010 Post-Tax Sale**

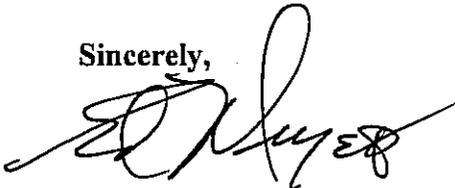
**Karen,**

**Thank you for sending me a copy of the confidential draft of the above-referenced report. My official statement would be for page 6 of the draft and should read as follows:**

**"I, Ed Meyer, president of the Board of Clark County Commissioners, attended and executed documents at the closing. At no time did I direct AFP to deliver the County's check to the Commissioner's office. Since Greg Fifer was the County Attorney, I would assume he would know which office to deliver County money in the manner prescribed by law."**

**Please let me know if you have questions, or need additional information.**

**Sincerely,**

A handwritten signature in black ink, appearing to read 'Ed Meyer', with a stylized flourish at the end.

**Ed Meyer**

BOARD OF COUNTY COMMISSIONERS  
 2010 POST-TAX SALE  
 CLARK COUNTY  
 SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Applegate, Fifer, and Pulliam LLC (AFP):			
Proceeds From Sale of Property Not Receipted to Financial Records, pages 8 to 10	\$ 107,476.97	\$	\$
Refunded by AFP, Receipt No. 035182, December 6, 2012	<u>                    </u>	<u>107,476.97</u>	<u>                    </u> -
Totals	<u>\$ 107,476.97</u>	<u>\$ 107,476.97</u>	<u>\$</u> <u>                    </u> -

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.