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July 11, 2017

*Via Email and Hand Delivery*

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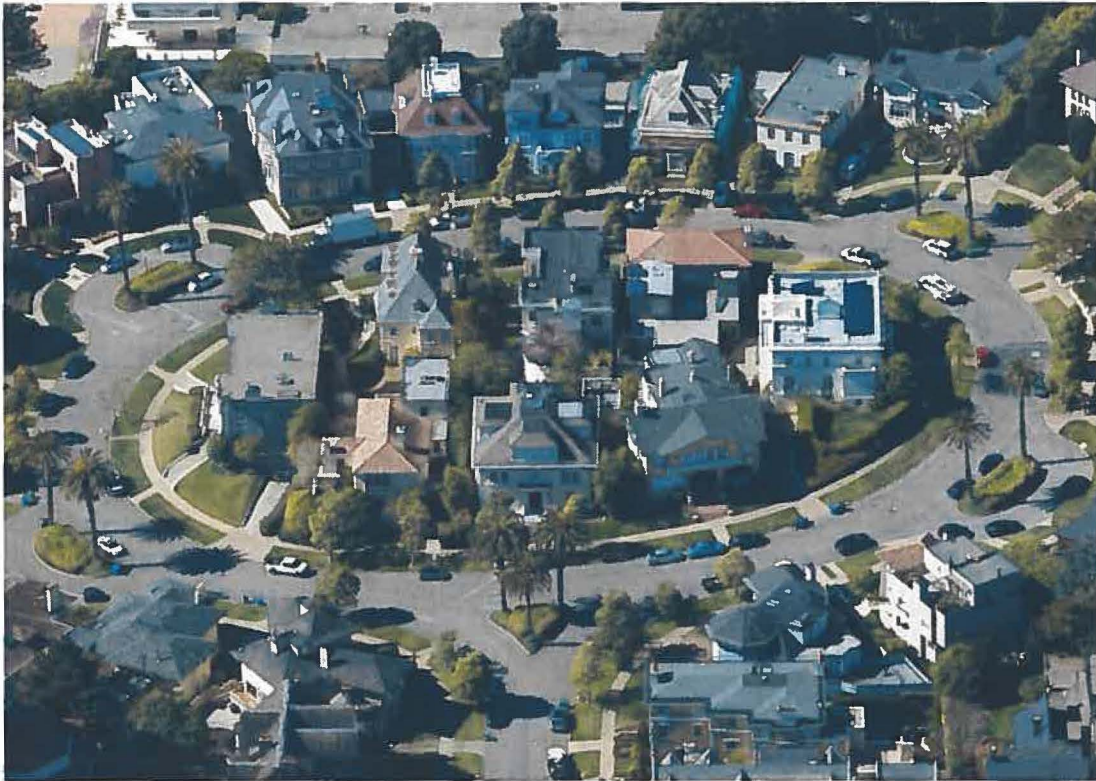
Re: Petition for Hearing to Rescind Tax Sale of Presidio Terrace  
Common Area

Dear Madam Clerk and Honorable Members of the Board of  
Supervisors:

Our firm represents the Presidio Terrace Association ("the  
Association"). Among other things, the Association owns and manages  
the common area at Presidio Terrace. As many of you are probably  
aware, Presidio Terrace is a unique cluster of homes off Arguello  
Boulevard across of the end of Washington Street, and adjacent to the  
Presidio of San Francisco and Temple Emanu-El.

While each homeowner in Presidio Terrace owns and cares of his or her  
home and property, the common area consisting of the private circular  
street, sidewalks, adjacent plantings, entrance gates and cultivated green  
strips are owned and controlled by the Association. Presidio Terrace  
has been owned and managed this way since at least 1905.

The photograph on the following page shows the configuration of  
Presidio Terrace and its common area property.



On May 30, 2017, the Association was informed that someone named Hiuyan Lam *now owns the common area*, after having purchased it at a tax sale. The Association was shocked. The property management firm was not aware of any sale or of any taxes owned, nor was any member of the Association.

### **How Did This Happen?**

While we are still waiting for records from the Tax Collector, here are some facts we have uncovered to date:

- The common area is considered by the Tax Collector to be a separate parcel on which property taxes must be paid annually. Those annual taxes are *less than \$14.00*.
- For many years (it is not clear how many years) the Tax Collectors has been sending tax bills to the Association at 47 Kearny Street. No in the Association is familiar with this address, and none of the recent property managers for the Association have offices at this address.

- Since the tax bills were being sent to an incorrect address, the Association was not paying the annual property taxes. The Tax Collector then proceeded to sell the common area at a tax sale.
- Instead of contacting any association member, contacting any resident of Presidio Terrace, posting any notice in the common area or anywhere at Presidio Terrace, or contacting the Association's property manager, the Tax Collector sent Notice regarding the tax sale to the same invalid address on Kearney Street.
- If these facts were not bizarre enough, the Tax Collector produced evidence that he properly sent a Notice of Tax Sale to the invalid Kearney Street address (zip code 94108), but the certified mail receipt says it was delivered to "SF Tax Collector" at a 94120 zip code.
- In April 24, 2015, the amount necessary to pay all back taxes, penalties and other changes was less than \$1,000.00. However, on April 24, 2015, the Tax Collector sold the common area to Hiuyan Lam for \$90,100.00.

Ms. Lam waited two years before she (through an agent) contacted the Association to let it know she had purchased the common area.

It is hard to understand why anyone would buy this property for any amount. But perhaps the explanation is provided by Ms. Lam's subsequent attempt to get the Association to "buy back" their property from her.

Just as curious, the Tax Collector has failed to provide any explanation regarding where the proceeds of this sale went. If Ms. Lam paid \$90,100, then about \$89,000 should have been returned to the Association, the property's owner.

### **Is This Lawful?**

In a word, no. While the Tax Collector will undoubtedly claim that he was following the letter of the Revenue and Taxation Code, even if that claim were true (a point of contention) it would not make this fiasco lawful. Courts have addressed similar situations and held that it is unconstitutional for the government to sell someone's property without make reasonable efforts to notify the property owner.

Angela Cavillo  
July 11, 2017  
Page 4

The court in *Banas v. Transamerica Title Ins. Co.* (1982) 133 Cal.App.3d 845, 851, held that under similar circumstances due process requires the government to use a means to notify the property owner that is not a "mere gesture," but that is reasonably likely to accomplish providing notice. The court went on to say, "The means most likely to give notice and one that is allegedly easy and inexpensive for government to utilize it posting the property." (See also, *Bank of America v. Giant Inland Empire R.V. Center, Inc.* (2000) 78 Cal.App.4th 1267 [County violated property owner's due process rights by not making reasonable efforts to obtain property owner's actual mailing address];

If the Tax Collector had really want to get the Association to pay the paltry overdue property taxes, I guarantee the posting of one conspicuous notice of unpaid taxes at Presidio Terrace would have done the trick.

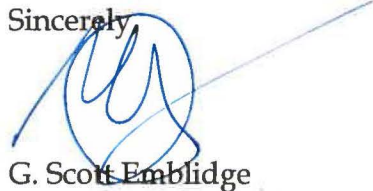
#### **How Can This Be Fixed?**

Fortunately, there is a way - albeit a cumbersome way - to right this wrong. Section 3731(b) of the California Revenue & Taxation Code provides that a tax sale "may be rescinded by the board of supervisors . . . [if] a hearing is scheduled before the board of supervisors, and" notice is provided to the purchaser of the hearing the reasons for rescinding the sale."

This letter is a request that the Board schedule such a hearing at the earliest possible opportunity.

I am available to answer any questions you or any member of Board may have.

Sincerely,



G. Scott Emblidge

cc: Members of the Board of Supervisors