

File No. 170888

Committee Item No. _____

Board Item No. 43

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____

Date: _____

Board of Supervisors Meeting

Date: September 5, 2017

Cmte Board

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

- | | | |
|--------------------------|-------------------------------------|---|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Moscone Emblidge & Otis letter - July 11, 2017</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Prepared by: Lisa Lew

Date: August 31, 2017

Prepared by: _____

Date: _____

1 [Committee of the Whole - Tax Sale of Presidio Terrace Common Area - October 31, 2017]

2
3 **Motion directing the Clerk of the Board of Supervisors to schedule a Committee of the**
4 **Whole hearing on October 31, 2017, at 3:00 p.m. to consider rescission of the tax sale**
5 **of the Presidio Terrace Common Area, pursuant to California Revenue and Taxation**
6 **Code, Section 3731; and establishing the process and conduct of the hearing.**

7
8 WHEREAS, On July 11, 2017, the Clerk of the Board of Supervisors received a letter
9 from the legal counsel representing the Presidio Terrace Association, on file with the Clerk of
10 the Board of Supervisors in File No. 170888, petitioning for the Board of Supervisors to
11 schedule a hearing to consider rescission of the tax sale of the Presidio Terrace Common
12 Area; and

13 WHEREAS, Pursuant to California Revenue and Taxation Code, Section 3731(b), the
14 sale of property by the tax collector may be rescinded by the Board of Supervisors if a hearing
15 is scheduled and notification is provided to the purchaser of the property or a successor in
16 interest; and

17 WHEREAS, There is no codified process or current policy for how this hearing and
18 consideration of the rescission should occur; and

19 WHEREAS, In order for the Board to ascertain all the facts and consider whether the
20 property should not have been sold, the Board wishes to hold a Committee of the Whole
21 hearing to consider testimony and documentation related to this matter; now, therefore, be it

22 MOVED, That the Board of Supervisors of the City and County of San Francisco
23 directs the Clerk of the Board of Supervisors to schedule a Committee of the Whole hearing
24 on October 31, 2017, at 3:00 p.m. to consider whether to rescind or not rescind the tax sale of
25 the Presidio Terrace Common Area; and, be it

1 FURTHER MOVED, That the Board of Supervisors directs the Clerk of the Board to
2 provide notification to the purchaser of the property or a successor in interest 45 days in
3 advance of the hearing, pursuant to the requirements found in California Revenue and
4 Taxation Code, Section 3731(b)(2); and, be it

5 FURTHER MOVED, The Committee of the Whole hearing shall be conducted in
6 conformance with the Board's Rules of Order and similar to Board Rule 4.19, except that the
7 order of presentation and testimony shall be as follows: 1) the petitioner or its representative,
8 3) public comment in support of the petitioner, 3) Tax Collector, 4) the purchaser of the
9 property or the successor in interest, 5) public comment in support of the purchaser of the
10 property or the successor in interest, 6) final comments from the petitioner, and 7) discussion
11 and questions from the Members of the Board, subject to change by the President of the
12 Board to ensure the efficient flow of business; and, be it

13 FURTHER MOVED, That upon adjournment of the Committee of the Whole hearing,
14 the Board shall consider a Motion to either rescind or not rescind the tax sale of the Presidio
15 Terrace Common Area, pursuant to the provisions of California Revenue and Taxation Code,
16 Section 3731.

**Moscone
Emblidge
&Otis** LLP

220 Montgomery St
Suite 2100
San Francisco
California 94104

Ph: (415) 362-3599
Fax: (415) 362-2006

www.mosconelaw.com

July 11, 2017

Scott Emblidge
emblidge@mosconelaw.com

Via Email and Hand Delivery

Angela Cavillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
Board.of.Supervisors@sfgov.org

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
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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.

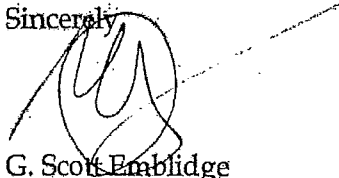
How Can This Be Fixed?

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

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Clerk of the Board

Subject:

Committee of the Whole - Tax Sale of Presidio Terrace Common Area - October 31, 2017

The text is listed:

Motion directing the Clerk of the Board of Supervisors to schedule a Committee of the Whole hearing on October 31, 2017, at 3:00 p.m. to consider rescission of the tax sale of the Presidio Terrace Common Area, pursuant to California Revenue and Taxation Code, Section 3731; and establishing the process and conduct of the hearing.

Signature of Sponsoring Supervisor: *Alisa Gomez*

For Clerk's Use Only