

From: [BOS Legislation, \(BOS\)](#)
To: emblidge@mosconelaw.com; shep@shepardkopplaw.com
Cc: [Givner, Jon \(CAT\)](#); [REIBER, SCOTT \(CAT\)](#); [Cisneros, Jose \(TTX\)](#); [Fried, Amanda \(TTX\)](#); [Buckley, Theresa \(TTX\)](#); [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS Legislation, \(BOS\)](#)
Subject: SUPPLEMENTAL PETITIONER APPEAL BRIEF: Hearing - Committee of the Whole - Tax Sale of Presidio Terrace Common Area - Hearing Date of November 28, 2017
Date: Monday, November 27, 2017 2:38:10 PM
Attachments: [image001.png](#)

Good afternoon,

Please find linked below an appeal brief received by the Office of the Clerk of the Board from G. Scott Emblidge of Moscone, Emblidge, & Otis, LLP, on behalf of the Presidio Terrace Association regarding the consideration of the tax sale of the Presidio Terrace Common Area.

[Petitioner Brief - November 17, 2017](#)

The hearing for this matter is scheduled for a 3:00 p.m. special order before the Board sitting as a Committee of the Whole on November 28, 2017.

I invite you to review the entire matter on our [Legislative Research Center](#) by following the link below:

[Board of Supervisors File No. 170963](#)

Regards,

Lisa Lew
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org



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220 Montgomery St
Suite 2100
San Francisco
California 94104

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

www.mosconelaw.com

November 17, 2017

Scott Emblidge
emblidge@mosconelaw.com

Via Email and Hand Delivery

Hon. London Breed, President
San Francisco Board of Supervisor
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Reply in Support of Presidio Terrace Association's Petition to Rescind Tax Sale of the Presidio Terrace Common Area

Dear President Breed and Honorable Members of the Board of Supervisors:

We write to briefly address some erroneous statement of facts and law contained in the filings presented to you by purchaser of the Presidio Terrace Common Area, and the San Francisco Treasurer.

Mistaken Assumptions

The purchaser's brief is premised on a critical mistaken assumption: "the Notice of Sale of Tax-Defaulted Property, delivered March 9, 2015, via certified mail, was signed for on that same day and not returned to the Tax Collector." (Purchaser's Brief at 10:8-9.) Our investigation has shown this statement to be incorrect. The Tax Collector now admits that the Notice of Sale was not "delivered to or signed for by the Association," and was in fact returned to the City as undeliverable. (See Exhibit 10 to our November 17 letter brief.)

As the purchaser's own brief acknowledges, this fact is critical to the legal issue at hand: "It is true that the U.S. Supreme Court and other courts have held that when the government knows that the owner of the property did not receive a letter of an impending tax sale, due process requires the government to do something more

before real property may be sold.” (Purchaser’s Brief at 12:1-4.) Here, the Tax Collector did *nothing more* after learning that the Notice of Sale was not delivered to the Association. He thereby violated the residents’ and the Association’s due process rights.

In addition, the purchaser’s brief raises an issue about the Tax Roll. As we pointed out in our November 17 letter brief, the 2000 Tax Roll states that the Association’s address is unknown, but the 2001 Tax Roll inexplicably inserts the 47 Kearny Street address. (See Exhibit 3 to our November 17 letter brief.) The purchaser’s brief states that it is “obvious” that the Association or its property manager provided the Tax Collector with the 47 Kearny Street address in 2001. (Purchaser’s Brief at 9:20-26.) Again, the purchaser is mistaken.

As stated in our opening brief, the 47 Kearny Street address was no longer valid *as of 1996* when the Association’s accountant, Samuel Mendelson, retired and closed his office at that address. Further, Mr. Mendelson passed away in January of 2001. Therefore, it would have made no sense in 2001 for anyone connected with the Association to provide the Tax Collector with an address for the Association’s deceased former accountant – an address that had not been in use for at least four years.

The Board’s Competence to Resolve This Matter

The purchaser asserts that the Board lacks the competence to evaluate the due process issues raised by the Presidio Terrace Association. There are several answers.

First, Revenue and Taxation Code section 3731 specifically entrusts a county board of supervisors with power to rescind tax sales if the board determines the sale should not have taken place.

Second, the Board regularly evaluates complex legal and constitutional issues both in its legislative and quasi-judicial capacities. In its legislative capacity, the Board evaluates at almost every Board meeting the due process and other constitutional implications of legislation it is considering enacting. In its quasi-judicial capacity, the Board is frequently called upon

to evaluate and resolve complex legal arguments under, for example, the California Environmental Quality Act and many aspects of planning and zoning law. The Board has the competence and the authority to resolve this discrete legal issue.

The Board's Process Does Not Violate the Purchaser's Due Process Rights?

The purchaser asserts that the Board's announced procedure for the upcoming hearing are "manifestly unfair." (Petitioner's Brief at 3:16.) As we are sure the City Attorney has advised you, due process requires in a quasi-judicial setting that the parties be provided with a hearing and an opportunity to be heard. (See *Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 543 ["Due process is the opportunity to be heard at a meaningful time and in a meaningful manner".].) The Board's rules provide this. Neither the purchaser, nor the Association, has the right to have the hearing conducted in a specific manner in terms of which party goes first or last, or how much time a party is given to speak. (See *Stanson v. San Diego Coast Regional Com.* (1980) 101, Cal.App.3d 38, 45 ["no particular form of proceeding is required so long as [it] provides for a 'reasonable' opportunity to be heard."].)

Should the Board Should Defer to the Treasurer?

Next, the purchaser asserts that the Board should defer to the Treasurer and Tax Collector. Again, this argument ignores section 3731, which vests in the Board, not the Treasurer, the power to determine whether "the property should not have been sold." Also, in his November 20 letter to the Board, the Treasurer repeatedly acknowledges that the question at hand is one for Board to decide. Finally, the purchaser asserts that county boards of supervisors always follow the recommendations of county tax collectors. That simply is not true. (See Exhibit A [earlier this year, the Los Angeles County Board of Supervisor rescinded a tax sale despite recommendations by the Tax Collector and a hearing officer that it should not rescind the sale].)

What are “Parties of Interest”?

Both the purchaser and the Treasurer misconstrue the phrase “parties of interest” as it is used in the Tax Code. The purchaser appears to believe that the Association is the only possible “party of interest” because it owns the property. In fact, the Tax Code expressly differentiates between property owners and parties of interest – and requires that the Tax Collector make reasonable efforts to notify *both* before selling property.

The Tax Collector recognizes an obligation to “locate parties of interest,” but then implies that parties of interest are limited to “owners of record and lien holders of record.” (Treasurer’s November 20, 2017, letter at p. 3.) That is simply not true and ignores the express language of the Tax Code.

Section 3701, which requires notice to “parties of interest” before a sale incorporates by reference the definition of “parties of interest” found in section 4675. That section defines parties of interest as “any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.” (Emphasis added.) The Tax Collector’s narrow definition ignores persons who have a recorded interest in all or any portion of a property. The California Legislature, in enacting this portion of the Tax Code, expressly intended to protect anyone with a “recorded interest in property.” (Exhibit B.)

California law is clear that easements are an “interest” in property. Since the Presidio Terrace homeowners all hold recorded easements over the common area lot sold at the tax sale, they were all “parties of interest” with title of record to a portion of the property and were entitled to notice before the Tax Collector sold the common area.

For all these reasons, and for the reasons stated in our November 17, 2017 letter brief, the Board should rescind this tax sale.

Sincerely,



G. Scott Embidge

cc: Hon. Sandra Lee Fewer
Hon. Mark Farrell
Hon. Aaron Peskin
Hon. Katy Tang
Hon. Jane Kim
Hon. Norman Yee
Hon. Jeff Sheehy
Hon. Hillary Ronen
Hon. Malia Cohen
Hon. Ahsha Safai
Clerk of the Board
Shepard Kopp (email only)
Theresa Buckley (email only)

Exhibit A



LORI GLASGOW
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 303
LOS ANGELES, CALIFORNIA 90012
(213) 974-3411 • FAX (213) 629-0636

MEMBERS OF THE BOARD

TILDA L. SOLIS

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SHIRLEY KUBHL

JANICE HAHN

KATHERYN BANGER

February 28, 2017

Mr. Ahmed Tabatabaeifar
4322 Alegre Way
Davis, CA 95618

Dear Mr. Tabatabaeifar:

Please be advised that on February 21, 2017, the Los Angeles County Board of Supervisors did not approve the recommendation of the Hearing Officer to uphold the sale of the tax-defaulted property located at 4133 Maguire Drive in Malibu, Assessor Identification Nos. 4461-015-003 and 4461-015-004 ("the Properties"), pursuant to Revenue and Taxation Code 3731. Therefore, the Treasurer and Tax Collector was instructed to rescind the sale on the Properties.

If you have any questions or need further information, please contact Kathy Gloster of the Department of Treasurer and Tax Collector at (213) 974-2077.

Sincerely,

Lori Glasgow
Executive Officer

LG:ls

c: Assessor
County Counsel
Auditor-Controller
Treasurer and Tax Collector ,

1 MARY C. WICKHAM, County Counsel
2 SAYUJ PANICKER, Deputy County Counsel
3 (SBN 259363) • spanicker@counsel.lacounty.gov
4 648 Kenneth Hahn Hall of Administration
5 500 West Temple Street
6 Los Angeles, California 90012-2713
7 Telephone: (213) 974-1845 • Fax: (213) 617-7182

8 Attorneys for Respondent,
9 Los Angeles County Treasurer and Tax Collector

10 **BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES**

11
12 Sadat, LLC (Ahmad Tabatabaeifar),

13 Petitioner,

14 v.

15 Los Angeles County Treasurer and Tax
16 Collector, Ji Hao Wong, and Nature Extend,
17 LLC

18 Respondents

**RESPONDENT'S, LOS ANGELES
COUNTY TREASURER AND TAX
COLLECTOR, RESPONSE TO
PETITIONER'S PETITION TO RESCIND
TAX SALE**

DATE: November 16, 2016

TIME: 1:30 PM

ROOM: Hall of Administration

500 West Temple Street

Los Angeles, California 90012

Rm. 437

19 Respondent, Los Angeles County Treasurer and Tax Collector ("TTC"), hereby responds
20 to Petitioner's, Sadat, LLC ("Petitioner"), Petition to Rescind Sale of Tax-Defaulted Property
21 ("Petition") for itself alone.

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HOA.100858191.1

RESPONSE TO PETITION TO RESCIND TAX SALE

1 **FACTUAL BACKGROUND**

2 This Petition arises out of the tax auction sale conducted by the TTC on or around October
3 19 and 20, 2015. At the auction, the TTC sold hundreds of parcels of real property, located in Los
4 Angeles County, that were delinquent in property taxes for at least three years. The TTC sold
5 these properties in accordance with section 3691 *et seq.* of the California Revenue & Taxation
6 Code ("R&TC"), related to the sale of tax-defaulted properties. Specifically, the TTC sold the
7 properties commonly identified as Assessor's Identification Number ("AIN") 4461-015-003, (the
8 "-003") and 4461-015-004 ("-004") (collectively the "Properties"), which were assessed to the
9 Petitioner. Tax deeds in favor of the purchasers at auction, Ji Hao Wong and Nature Extend, LLC,
10 respectively, were executed on January 7, 2016.

11 Pursuant to R&TC sections 3725 and 3731, the Petitioner seeks to rescind the tax sales for
12 the Properties on the basis that Petitioner was not notified of tax bills for the property.

13 **DISCUSSION**

14 **I. Petitioner's Failure to Receive a Tax Bill Does not Relieve its Lien for Taxes**

15 All real property taxes on the secured roll are payable in two equal installments. The first
16 installment is due on November 1, and the second installment is due on February 1. *See* R&TC §§
17 2605 and 2606, respectively. The first installment becomes delinquent on December 10 at 5 p.m.,
18 or at the close of business, whichever is later; and the second installment becomes delinquent on
19 April 10 at 5 p.m. at the close of business, whichever is later. *See* R&TC §§ 2617 and 2618,
20 respectively. A 10% penalty is added if the tax is paid after the delinquency date. *Id.* Failure to
21 receive a tax bill shall not relieve the lien of taxes, nor shall it prevent the imposition of penalties
22 imposed by this code. R&TC § 2610.5.

23 Petitioner argues that it did not receive "notice" of its property tax bills for the Properties.
24 Section 2610.5 of the R&TC provides that the failure to receive a tax bill does not relieve a
25 taxpayer's lien for taxes, or the imposition of penalties. Moreover, nowhere in the R&TC does it
26 state that the failure to receive a tax bill is a basis for invalidating a tax sale under R&TC section
27 3725. Also, Petitioner has submitted no evidence that it provided the County of Los Angeles with
28

1 any notice that it updated its address for mailing the tax bills. For this reason, Petitioner has failed
2 to even state a valid basis for rescinding the tax sale. Therefore, the Petition should be denied.

3 **II. The County sent notice to Petitioner of the Tax Sale as Required by R&TC**
4 **section 3701**

5 R&TC section 3701 prescribes the statutory duty of the tax collector to send notice of an
6 impending sale to parties of interest. The section states: "Not less than 45 days nor more than 120
7 days before the proposed sale, the tax collector shall send notice of the proposed sale by certified
8 mail with return receipt requested to the last known mailing address, if available, of parties of
9 interest, as defined in Section 4675 ." Further, the tax collector shall make a reasonable effort to
10 obtain the name and last known mailing address of parties of interest. *Id.* A "party of interest" is
11 defined as a lien holders of record or anyone with record title to a property prior to the tax sale.
12 R&TC § 4675.

13 Under section 3701 of the R&TC, the County was required to both mail the notice of the
14 tax sale to the Petitioner, and to make a reasonable effort to obtain the name and last known
15 mailing address of the Petitioner, as a party of interest. The County retains the mailing list, which
16 shows to where it sent the notices of auction for its tax sales. [Attached as Exhibit 1 is a true and
17 correct copy of the mailing lists for the Properties.] Prior to mailing the notices, the TTC orders a
18 title report (the "Report") to obtain the name and last known mailing address of the party of
19 interest. [Attached as Exhibit 2 is a true and correct copy of the Reports for the Properties].

20 The Reports show that Petitioner was a party of interest by virtue of a grant deeds recorded
21 on or around June 25, 2010. [Attached as Exhibit 3 are a true and correct copies of the grant deeds
22 for the Properties]. As part of its effort to obtain the name and last known mailing address of the
23 assessee of record, the County conducted a business search on the website of the California
24 Secretary of State for the agent of service of process for the Petitioner, which is a limited liability
25 company ("LLC"). [Attached as Exhibit 4 is a true and correct copy of the business search results
26 from the website of the California of the Secretary of State]. The search result indicated that
27 Ahmad Tabatabaeifar was the agent for service of process, and located an address associated with
28 this individual. In addition, the TTC conducted a search on its records database called, Optima.

1 The TTC uses Optima to scan and store tax payments received by check from tax payments. This
2 search revealed an apartment number for the address associated with the Petitioner. [Attached as
3 Exhibit 5 is a true and correct copy of Petitioner's tax payment check sent to the TTC]. The
4 County then mailed notices to the addresses associated with both the business search and the
5 Optima search. [See Exhibit 1].

6 **Because the TTC searched two different databases for addresses associated with Petitioner,**
7 **and mailed notices to these addresses, the County's efforts were reasonable under section 3701 of**
8 **the R&TC. Thus, there exists no basis to invalidate the tax sales of the Properties for failure to**
9 **comply with this section. Because the Petitioner has failed to show any basis for invalidity or**
10 **irregularity in the tax sale process under R&TC section 3725, the Petitioner's Petition should be**
11 **denied.**

12
13 DATED: November 9, 2016

Respectfully submitted,
MARY C. WICKHAM
County Counsel

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17 By _____
18 SAYUJ PANICKER
19 Attorneys for Los Angeles County Treasurer and Tax
20 Collector
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Exhibit B

ANALYSIS OF ASSEMBLY BILL NO. 560 (Maxine Waters)
As Amended in Assembly May 9, 1979
1979-80 Session

AB 560 (Am. 5/9/79)

Fiscal Effect:

Cost: State: None.
Local: Local Mandated Cost. Minor administrative costs; reimbursement disclaimed.

Revenue: State: None.
Local: Minor increase in fees collected from excess proceeds of tax sales to cover administrative costs.

Analysis:

This bill would (1) require local agencies to provide notice to persons with recorded interest in property sold at public auction to recover delinquent taxes, and (2) provide that the minimum price for which such property may be sold is 50 percent of its fair market value.

Current law specifies various procedures for the sale of property at a public auction to recover delinquent taxes or assessments. However, there is no requirement that persons having a recorded interest in the property be notified of the sale of that property. This bill would require county assessors or treasurers to notify, by mail, persons with a recorded interest in property sold at a public auction within 90 days of the sale of that property, or if the address of such a person is not known, they would be required to publish notice in a newspaper of general circulation once per week for three weeks.

Current law also specifies no minimum price for property sold at a public auction. This bill would specify

that such property not be sold for an amount less than 50 percent of the fair market value of the property.

Mandated Local Program. This bill would require certain local agencies to provide notice to persons having a recorded interest in property sold at a public auction. The bill specifies that the cost of obtaining names and addresses, and of mailing or publishing the notices required by the bill, are to be deducted from the excess proceeds of the sale of the property and deposited in the county general fund. Thus, while the bill would result in additional costs to local agencies to provide notice, the bill provides for the recovery of these costs from the excess proceeds resulting from the sale of the property.

The bill disclaims reimbursement for the costs incurred as a result of the duties imposed by it with the statement that these duties can be accomplished with no additional cost.