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2017 DEC 11 PM 3:32

BY



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December 11, 2017

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

**Re: Presidio Terrace Rescission
File Nos. 170963 and 171281**

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

We are litigation counsel for Michael Cheng and Hiuyan (“Tina”) Lam. I write concerning the proposed Motion Adopting Findings In Support of the Board of Supervisors’ Decision to Rescind the Tax Sale of the Presidio Terrace Common Area, Assessor’s Block No. 1355, Lot No. 001, Pursuant to California Revenue and Taxation Code, Section 3731 (“Proposed Findings”), which is scheduled to be heard on Tuesday, December 12, 2017.

The Board has already had an opportunity to review and consider the submissions that my clients made in connection with the November 28, 2017 hearing, and while my clients respectfully continue to believe that the Board’s conclusion that “the property should not have been sold” is erroneous based on the points and authorities raised in those submissions, they acknowledge that the Board already had an opportunity to consider those points before making its decision. If necessary, my clients will revisit those arguments in court.

I write today to address two new points.

First, my clients have now had the benefit of reviewing the Board’s Proposed Findings and seek to address an important potential factual misunderstanding contained in that document. On page 2, lines 9-13, the Proposed Findings state that “upon receiving *confirmation* that the owner of the property had not received the mailed notice, the Treasurer-Tax Collector should have taken additional measures reasonably calculated to provide notice to the property owner.” (Emphasis added.) But the petitioner presented no

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evidence to the Board showing the Treasurer-Tax Collector ever actually “confirm[ed]” that the Presidio Terrace Association had not received the notice before the tax sale on April 17, 2015. The materials presented to the Board only demonstrate that *nearly 900* similar notices mailed in connection with the 2015 tax auction were returned to the Treasurer-Tax Collector as undeliverable. My clients have since contacted the Treasurer-Tax Collector’s office to determine when, exactly, they first determined that the *particular piece of mail* concerning Presidio Terrace had been returned to their offices, and whether that determination occurred before the tax sale. Nothing in the record available to the Board indicates that the Treasurer-Tax Collector confirmed that the notice was returned before the tax sale.

In other words, nothing in the record supports the suggestion that the Treasurer-Tax Collector was actually aware that the Presidio Terrace Association had not received notice of the impending tax sale before proceeding to sell the property at the tax sale. This is significant because that Tax and Revenue Code only requires the tax collector to send notice to “the *last known* mailing address” of the parties in interest. (Rev. & Tax Code, § 3701, emphasis added.) And that same statute is clear that “[t]he validity of any sale under this chapter *shall not be affected . . . if a party of interest does not receive the mailed notice.*” (*Id.*, emphasis added)

In sum, if the Board’s decision was based on the mistaken assumption that the Treasurer-Tax Collector had *actual knowledge* that the Presidio Terrace Association had not received notice of the tax sale before the tax sale, I encourage the Board to revisit its decision. The Treasurer-Tax Collector diligently took the steps it was required to take under the law, and the sale was completed in accordance with all legal requirements. And this very Board exercised its oversight over that process, considered the proposed tax sale as part of a motion introduced by Supervisor Mark Farrell at a meeting, and *approved* it on February 24, 2015. The only legal violation that took place in connection with Presidio Terrace was its association’s complete failure to pay *any* property taxes for twenty years prior to the 2015 tax sale, which was the second tax sale on this property.

Second, I also write to express concern about the inconsistency between the stated reasoning in the Proposed Findings and at least one Supervisor’s apparent true motivations for granting the Presidio Terrace Association’s request for rescission. Shortly after the Board’s last meeting, on December 3, 2017, Supervisor Farrell, who voted against my clients *even though he originally moved to authorize the initial tax sale*, was quoted by the San Francisco Chronicle as calling my clients “bottom-feeding pirates attempting to extort and hold San Francisco residents hostage.” In an earlier article, dated

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November 28, the Chronicle reported that Supervisor Farrell dismissed my clients as “out-of-town ‘speculators.’” I have enclosed copies of both articles with this letter.

These comments are, of course, both offensive to my clients—who have not been accused of engaging in any wrongdoing in connection with their purchase of the Presidio Terrace Common Area—and *completely irrelevant* to the Board’s reasoning as stated in the Proposed Findings. If the Board’s decision is motivated only by concerns about whether the Treasurer-Tax Collector provided adequate notice of the tax sale to the Presidio Terrace Association, why is one of its Supervisors (indeed, the one whose voters include Presidio Terrace’s residents) telling the press that my clients are “bottom-feeding pirates” and suggesting that this situation is their fault? It is unclear why Supervisor Farrell holds personal animus against my clients, and it is also unclear how many other Supervisors share similar views, but to the extent the Board’s decision was motivated by that animus instead of the law, I urge the Board to reconsider its decision.

For these reasons, as well as all other reasons previously articulated in my clients’ earlier submissions, I ask that the Board reject the motion adopting findings to support its rescission of the tax sale. If the Board nonetheless approves the motion, please be advised that my clients intend to pursue all available remedies in the courts.

Sincerely,

Timothy Yoo

Timothy B. Yoo

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Enclosures

CC:

Members, San Francisco Board of Supervisors
Angela Calvillo, Clerk of the Board of Supervisors

Rich residents who got SF street back will pay 12 cents a year in taxes

By Matier & Ross | December 3, 2017 | Updated: December 4, 2017 6:00am

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Photo: Marcio Jose Sanchez, Associated Press

FILE - In this Aug. 7, 2017 file photo, street signs are seen at the intersection of Presidio Terrace and Arguello at the entrance to the Presidio Terrace neighborhood in San Francisco. Wealthy homeowners whose private, gated and very exclusive San Francisco street was auctioned off after decades of unpaid taxes are asking supervisors Monday, Nov. 27, 2017, to undo the sale, prompting cries of elitism in a city obsessed with property and fairness. (AP Photo/Marcio Jose Sanchez, File)

Not only did the residents of San Francisco's exclusive Presidio Terrace win back their gated street — they also get to keep their bargain-basement tax rate of \$4.28 a year for the private roadway and sidewalks.

That works out to 12 cents a year in property taxes for each of the 35 homeowners who once again jointly control the street, now that the Board of Supervisors has voted 7-4 to rescind the city's tax-default sale of the property to a South Bay couple.

Nullifying the city treasurer's 2015 tax sale means that **Tina Lam** and **Michael Cheng** of San Jose will get back the \$90,100 that they paid for the street in an online auction in 2015.



Photo: Nicole Boliaux, The Chronicle

Tina Lam and her husband, Michael Cheng, outside Presidio Terrace in August. The couple bought the public areas of the gated neighborhood at a city tax auction in 2015, only to have the Board of Supervisors undo the sale Nov. 28.

It also means that the street's property tax — which went unpaid for 15 years because the city was sending the bill to the address of a long-retired accountant — reverts to \$4.28 a year. Had the supervisors voted to let the sale stand, the property tax would have been \$1,054 a year.

“That’s correct — it reverts back like it hadn’t been sold,” said city Assessor-Recorder **Carmen Chu**.

Future increases will be limited to the 2 percent a year allowed under Proposition 13.

The homeowners, however, will have to pay the \$994 in back taxes and penalties that led to the property going on the auction block. The land also carries \$345 in annual special assessments from the San Francisco schools and community college district.

Presidio Terrace homeowners successfully argued that the street, sidewalks and palm-lined green strips of their private enclave had been sold out from under them without their knowledge. And while they conceded they had neglected to pay their annual taxes, they blamed the treasurer-tax collector's office for sending their bills to the out-of-date address.

The \$4.28-a-year tax bill is "a steal, but there is nothing lawmakers can do about it," said Supervisor **Aaron Peskin**, one of the four supervisors who voted against reversing the sale. "The assessment laws are the assessment laws in the 58 counties of California."

Supervisor **Mark Farrell**, whose district includes Presidio Terrace, said that if there was any steal involved, it was the "bottom-feeding pirates attempting to extort and hold San Francisco residents hostage."

And he noted that even if the city wanted to raise the tax, Prop. 13 would prevent it.

The Presidio Terrace homeowners association has held title to the private street since 1906. And while assessor records cover only the last three decades or so, there is no evidence that the property has ever been reassessed.

Prop. 13, which the state's voters passed in 1978, capped residential tax hikes at 2 percent, starting with a property's 1975 assessment. No reassessment happens unless a property changes hands.

Assessor's records list the Presidio Terrace property's value at \$362. Establishing the true value would not be easy, given its circular configuration and easement rights that assure those living on the street can get in and out of their homes.

“It’s zoned residential, so it’s not like someone could built a casino or pot club on it,” Peskin said. “Still, it does have value.”

It’s safe to say Lam and Cheng saw more value in a prime piece of real estate than \$362. Their lawyer says they’re thinking of suing.

Matt Dorsey, a spokesman for the homeowners, said the couple met twice with his Presidio Terrace clients several months back. Lam and Cheng said the property would be worth \$18 million to \$34 million “after it was converted to a parking lot and began generating revenue,” Dorsey said.

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In fact, when we interviewed them over the summer, the couple floated the idea of using the street for parking — saying that if the Presidio Terrace residents weren’t interested in paying for parking privileges, perhaps some of their neighbors outside the gates would be.

Lam and Cheng insisted at the time that the property wasn’t for sale. Only as the two sides were headed to last week’s City Hall showdown did members of the Board of Supervisors suggest the homeowners reach out with an offer to buy back the property for \$200,000, or roughly double what they had paid for it.

Dorsey says the couple’s attorney, **Shep Kopp**, countered with an offer of \$950,000. But before homeowners had a chance to consider the proposal, Lam and Cheng “spoke directly to members of the

MORE BY MATIER & ROSS



SF prosecutors made key miscalculation in Kate Steinle case

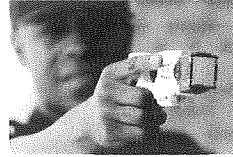
homeowners association and told them the property was not for sale,” Dorsey said.



Undoing sale of rich SF street was a matter of national security

“And that closed the door for the final time.”

Kopp declined to discuss details of his last-minute negotiations with the homeowners. But he did have some choice words for Farrell, whom he described as “a craven lickspittle who is only too happy to carry water for his rich neighbors in Presidio Heights.”



SF police union wants a city vote on Tasers for cops

“And it’s dismaying to see District Two represented by this opportunist who needs these homeowners to contribute money to his campaign for mayor,” he said.

San Francisco Chronicle columnists Phillip Matier and Andrew Ross appear Sundays, Mondays and Wednesdays. Matier can be seen on the KPIX TV morning and evening news. He can also be heard on KCBS radio Monday through Friday at 7:50 a.m. and 5:50 p.m. Got a tip? Call (415) 777-8815, or email matierandross@sfchronicle.com. Twitter: @matierandross



Matier & Ross
Chronicle Columnists

Rich San Francisco homeowners get sold-off street back

JANIE HAR, ASSOCIATED PRESS | November 28, 2017 | Updated: November 30, 2017 4:44am

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because of wildfires

7:13 PM

UC Santa Barbara postpones final exams



fires expected again over...

6:03 PM

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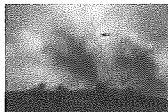


Photo: Marcio Jose Sanchez, AP

IMAGE 1 OF 2

FILE - In this Aug. 7, 2017 file photo, is an overview of the Presidio Terrace neighborhood in San Francisco. Wealthy homeowners whose private, gated and very exclusive San Francisco street was auctioned off ... more

SAN FRANCISCO (AP) — Residents of an exclusive San Francisco neighborhood who failed to pay taxes on their private, gated street for two decades got the street back Tuesday after supervisors voted to rescind the sale of the tax-defaulted property.



The Board of Supervisors split 7-4 on the move, with those in favor saying residents of Presidio Terrace had not received enough notice before their sidewalks, street and common areas were sold at auction in 2015.

Supervisor Mark Farrell, who represents the district, said it was not good policy to allow out-of-town land "speculators" to swoop in on law-abiding property owners who simply did not know they owed tax on their street.

He agreed the homeowners' due process rights were violated when the tax collector sent tax bills to an outdated address. The association had failed to update its mailing address.

"When I look to the constitution and deprivation of property and taking of property from individuals, I think that is a high standard that hasn't been met here," Supervisor Katy Tang added.

Supervisor Hillary Ronen voted against reversing the sale, saying homeowners had defaulted before and should have been on notice.

She agreed that most people did not expect to pay taxes on sidewalk in front of their house but pointed out that most people don't have a private street in front of their house.

"Did the treasurer act unreasonably? I don't think so, and should we give a second bite of the apple to these homeowners when most people don't get that?" she said. "I don't think so."

The issue is unprecedented in San Francisco, although supervisors in other California counties have reversed sales as allowed under state law.

The oval-shaped street in upscale Presidio Heights is lined with leafy palms, lush landscaping and multimillion-dollar mansions. Previous residents of the gated neighborhood include U.S. Rep. Nancy Pelosi and U.S. Sen. Dianne Feinstein, who wrote a letter that accused the city of bureaucratic bungling.



Current residents lined up Tuesday to plead their case, saying they were regular, hard-working San Franciscans who had faithfully paid taxes on their homes and simply didn't know about the separate tax lot. The British consul general in San Francisco lives in the neighborhood.

The residents cheered when the vote was announced.

Investor Tina Lam had bought the street, its sidewalks and common areas for a mere \$90,000 at an auction in 2015 after the Presidio Terrace Association failed to pay property taxes on it for two decades. The annual tax bills of \$14 and auction notice were sent to an outdated address that the association failed to update.

Homeowners learned about the sale earlier this year and petitioned the board for a hearing.

City Treasurer Jose Cisneros said he followed the rules and that there was no indication that the property, listed as a vacant lot, was attached to residences. Otherwise, he said his office would have reached out to homeowners.

It marks the second time the association has defaulted, but it won back the street in 1985 after paying up.

Shepard Kopp, attorney for the buyer, said in a statement he was disappointed in the supervisors who sided with the association.

