



Board Agenda Item 8

DATE: March 11, 2025

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA, Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Hearing on Rescission of March 2024 Tax Sale of APN 393-180-40S

RECOMMENDED ACTION(S):

Conduct hearing on proposed rescission of the County's sale of APN 393-180-40S, described as "SUR RTS TRIANGULAR PAR IN SE1/4 SEC 8 T16R22," located near Mountain View and Dockery in Selma, at the County's March 14 through 15, 2024 sale of tax-defaulted properties.

The property identified by Assessor's Parcel Number (APN) 393-180-40S (Subject Property) was sold at the County's annual sale of tax-defaulted properties on March 14 through 15, 2024 (Tax Sale). Before the Tax Sale, the Subject Property was assessed to Diamond Estates LLC (Previous Assessee). The purchaser of the Subject Property at the Tax Sale was 4921 E Tulare LLC (Purchaser). On September 12, 2024, attorney Justin Campagne, on behalf of the Previous Assessee submitted a letter to the Auditor-Controller/Treasurer-Tax Collector (Tax Collector) contesting the Tax Collector's sale of the Subject Property. The Previous Assessee alleged that the notices for the Tax Sale contained a parcel number different from the number on the Previous Assessee's grant deed. That was not correct. But the Tax Collector upon further investigation found that the Tax Collector did list, sell, and deed a property not subject to the power of sale. That is because the legal description for the property to be sold, which was provided by the Assessor, erroneously included both the parcel that was subject to the Tax Collector's power to sell and an adjacent parcel that was not subject to that power. The recommended action allows Previous Assessee and the Tax Collector to present their reasons for rescission and gives the Purchaser an opportunity to present its objections to the petition, if any. This item pertains to a location in District 4.

Staff will recommend that your Board rescind the sale of the Subject Property.

ALTERNATIVE ACTION(S):

There is no alternative action. The Previous Assessee has a right to a hearing before your Board on this matter, and an obligation to request such a hearing before it may file a lawsuit against the County on this matter, if it wishes to do so (Revenue and Taxation Code § 3725(a)(1)). The hearing and the determination by the Board is necessary because the Purchaser has refused a consensual rescission.

FISCAL IMPACT:

If your Board rescinds the sale, the County would be required to issue a refund to the Purchaser of the amount paid as the total purchase price at the Tax Sale (\$28,631.90), plus interest at the greater of 3% annually or the County pool apportioned rate from the date of the purchase of the property at the tax sale until the date of the rescission. Interest that would be due through March 11, 2025, is estimated to be \$854.25. If the order to rescind were to occur on a later date, the amount of interest would be higher. If your Board decides not to rescind the sale, then there would be no Net County Cost due to a refund but a

possible lawsuit from the Previous Assessee.

DISCUSSION:

Prior to the tax sale, the Tax Collector issued all legally required notices. These included tax bills mailed to the Previous Assessee at the address they provided and a Notice of Power to Sell that was recorded on July 15, 2022. (The Tax Collector originally expected to sell the Subject Property in 2023, but for unrelated reasons the Tax Collector did not conduct a tax sale in 2023.) A notice of the tax sale was also sent via certified mail on January 26, 2024, to the same address that had been provided by the Previous Assessee.

On March 14, 2024, the Tax Collector sold the Subject Property at the tax sale for \$28,600.

On May 8, 2024, the Previous Assessee contacted the Tax Collector's office regarding the sale, seeking information on how to rescind the sale. The Previous Assessee also sent an email later that evening. In the first email, the Previous Assessee stated they had made a payment of \$10,236.93 for the Subject Property. After researching the matter, the Tax Collector determined that the amount of \$10,236.93 paid by the Previous Assessee was for multiple unsecured property tax liens, not the Subject Property. The Tax Collector informed the Previous Assessee of that.

On June 8, 2024, attorney Justin Campagne submitted a public records request on behalf of the Previous Assessee, seeking documents related to notices, tax bills, and other communications regarding the property. The Tax Collector provided the requested records on June 24, 2024.

On September 12, 2024, attorney Campagne submitted a letter on behalf of the Previous Assessee contesting the sale of the Subject Property, alleging incorrect references to the Subject Property's APN in statutory notices, which allegedly prevented proper notice of the sale so that the Previous Assessee did not timely exercise the right of redemption. The allegation was not correct because the Subject Property's APN was correctly listed in all of the statutory notices. But this allegation prompted the Tax Collector's office to investigate further.

Upon review, the Tax Collector's office discovered that the Assessor's Office had provided an incorrect *legal* description for the Subject Property subject to the Tax Collector's power to sell. The incorrect legal description included both the Subject Property and another adjacent parcel that should have been separately identified by APN 393-180-49 (Adjacent Parcel). That resulted in the sale of more property than was lawful or intended. Even so, only the APN for the Subject Property was listed on the notice. That is, the Adjacent Parcel was included in the tax sale, even though it should not have been, but its APN did not appear in any of the documents. It is important to understand that, in real property title records, the APN is only a number assigned by the Assessor for convenient reference for tax purposes, while the legal description is what matters for ownership purposes.

As part of the annual tax sale processes, the Tax Collector's office sends over to the Assessor's office the list of parcels, identified by APN, that have become subject to the Tax Collector's power to sell. Then the Assessor's office provides the legal descriptions for each of these parcels. The Subject Property was subject to power to sell, so APN 393-180-40S was included on the Tax Collector's list. But when the Assessor's office returned the legal description for the Subject Property, it contained not only the legal description of the Subject Property but also the legal description of the Adjacent Parcel. The Adjacent Parcel was not subject to the Tax Collector's power to sell.

On September 25, 2024, the Tax Collector's office notified the Purchaser of the Tax Collector's request to rescind the tax deed by a consensual process due to this error. The purchaser responded with inquiries on October 3 and October 18, 2024, expressing opposition to the consensual rescission. The Tax Collector's office made further efforts to see whether the Purchaser would consent to rescission, and the Purchaser expressed further objections on November 4, 2024. Because the Tax Collector's office takes seriously the concerns raised by both the Previous Assessee and the Purchaser, staff continued researching the matter

to determine whether a different resolution might be reached. Ultimately, the Tax Collector decided to recommend that your Board rescind the sale.

Pursuant to the requirements of Revenue and Taxation Code section 3731, subdivision (b)(2), the Tax Collector gave 45 days' notice of the hearing to both the Previous Assessee and the Purchaser. That notice was sent on January 24, 2025.

During the hearing, the Tax Collector intends to present evidence showing that the legal description of the Subject Property erroneously also included the description of the Adjacent Parcel. The Tax Collector intends to show that the Notice of Tax Sale, the auctions website, and the Tax Collector's deed to the purchaser all included the erroneous legal description of both the Subject Property and the Adjacent Parcel. Therefore, the notices received by the prior owner did not correctly describe the property that was at risk and information provided to prospective tax sale purchasers did not accurately describe what they were bidding on. Because of these errors, the property should not have been sold.

Findings Required to Rescind the Sale of Tax-Defaulted Property

To rescind the Tax Sale of the property, your Board must make the following findings, based on the testimony, documents, and arguments presented during the hearing:

1. The property should not have been sold.
2. The property has not been transferred or conveyed by the Purchaser to a "bona fide purchaser for value" since the deed to the Purchaser was recorded on April 29, 2024.
3. The property has not become subject to a "bona fide encumbrance for value" since the deed to the Purchaser was recorded on April 29, 2024.
4. The Purchaser received notice of this hearing as required by Revenue and Taxation Code section 3731, subdivision (b)(2)

Staff believes, and will recommend to your Board, that there is sufficient evidence to make all four required findings.

For purposes of finding 1, the property should not have been sold because the Subject Property that was subject to power to sell was the only property that should have been sold at the tax sale, but the Adjacent Parcel was also included as part of property that was being sold. For the recorded documents where that erroneous legal description appeared, including the Notice of Power to Sell and the Tax Collector's deed, that created a defective record of title. Because the defect appeared in the initiating document, the Notice of Power to Sell, the whole process from that point was defective. Further, because the erroneous legal description is what the Assessor's office associated with the APN for the Subject Property, that created a lack of clarity on what the APN referred to.

Without training or expertise on how to interpret legal descriptions, the Tax Collector's office relies on the Assessor's office for correct legal descriptions. The Tax Collector believes that this situation is more than just a clerical error that can be fixed by correcting the Tax Collector's deed to the Purchaser because the erroneous and misleading legal description including both the Subject Property and the Adjacent Parcel prevented the tax sale from being a fair process for all involved.

For purposes of findings 2 and 3, the Subject Property has not been transferred or encumbered since the tax deed.

For purposes of finding 4, the Tax Collector sent the notice on January 24, 2025, as stated above, which

was 46 days before the March 11 hearing, including the information required by Revenue and Taxation Code section 3731, subdivision (b)(2): the date, time, and place of the hearing; a description of the property that was sold; the reason for rescinding the sale; and a statement that a refund will be issued to the Purchaser, as provided by law, if the sale is rescinded.

REFERENCE MATERIAL:

BAI # 22, December 12, 2023

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Attorney's letter on behalf of Previous Assessee to the Tax Collector

On file with Clerk - The Purchaser Written Materials

Tax Collector PowerPoint Presentation

The Purchaser PowerPoint Presentation

CAO ANALYST:

Paige Benavides