

November 6, 2005

CITY OF BERKELEY  
CITY CLERK DEPT

05 NOV -7 AM 9:20

To the City Council of the City of Berkeley and whomsoever else it may come to concern:

This is a follow-up letter to my appeal of July 19, 2005 to be presented to you in preparation for the City Council meeting of November 15, 2005, whereat you are scheduled to consider my appeal of the Zoning Adjustment Board decision regarding 2235 Derby Street Use Permit #05-10000043.

A few things have transpired since my appeal which bear strongly upon that appeal. Firstly, I have been diagnosed with fourth stage salivary gland cancer of a type known as acinic cell carcinoma. This is a low grade cancer, for which radical therapies such as surgery, chemotherapy, and radiation rarely work. On the other hand, because it is low grade, there is a chance of a spontaneous remission. That depends, however, on my remaining healthy, and that it turn depends very heavily upon my being able to breathe fresh air at night when I sleep that is not contaminated with particulate matter containing even large trace amounts of pulmonary irritants and neurotoxins. Therefore, all the reasons for my appeal have now taken on a new poignancy.

Let me say at this point, before providing further details, that I have faxed all my medical papers containing the diagnosis of cancer to the Acting Health Officer of the City of Berkeley, Vicki Alexander, M.D., MPH. She has reviewed that material and my appeal and made an official recommendation to you, which will be attached to this letter, but reads as follows:

I have reviewed the case of Mr. Peter Mutnick and his medical records. In my medical judgement there is a legitimate concern in his case. I encourage you to strictly enforce the Berkeley Municipal Code, Sections 12.32.020, 12.32.030 and 12.40.030 in this instance.

Thank you for your attention to this matter. Please include this e-mail in your documentation to Council on November 15, 2005.

This recommendation was arrived at in conjunction with Mr. Ramirez, the head of the Environmental Health Division, and was originally addressed to Mark Rhoades, Daniel S. Marks, and Joan MacQuarrie. It was cc'd to Manuel Ramirez and Lynda Dailey, and later forwarded to me, upon my request.

The admonition to strictly enforce the cited Code Sections clearly refers to my appeal, since those Code Sections were cited therein. I discussed them with Ms. Alexander. This recommendation is not a moot point with respect to my appeal, since all the public officials I have talked to (such as Stephen Ford and Dan Marks) have indicated that the Code Sections will **not** be strictly enforced, since they are not strictly enforced (in the sense meant here) in other cases.

The present Decision of the ZAB assumes that they will not be strictly enforced, since conditions 17 and 18 allow for piles of debris to remain on private property, even though they constitute "a menace to the life, health, comfort, [and] convenience of the community," in violation of Berkeley Municipal Code Section 12.40.030 and also Section 12.32.030, which requires all such debris to be placed in "sufficient containers," sufficient to avoid posing a menace.

Therefore, it is incumbent upon you that you hold a public hearing on this matter and not rubber stamp it without a hearing as you are known to do in almost all such cases. I am asking that you behave as human beings and not bureaucrats in this instance, and hopefully in others, as well.

Now I will continue with my own assessment of the situation. There is a possibility that this cancer I now have was caused by my previous exposure to similar renovations to the ones now planned at my previous address, 2826 Telegraph Avenue, Apartment 7. Those two successive renovations went on for six months apiece, and toward the end of the second renovation, I became very, very sick from breathing the particulate laden air that by then permeated my apartment. Kriss Worthington saw me on the street at that time and should be able to testify to the fact that I was virtually non-functional in the sense of being almost unconscious and unable to walk down the street.

My initial symptoms at that time were asthma-like attacks at night and a terrible taste of dust from building materials in my mouth which I could not get rid of. There is a suspicion that carcinogens entered into my parotid gland by the route from my mouth through the parotid duct that connects the mouth and the gland. Doctors have informed me that cancer can travel upstream through a duct. The particulates also got into my lungs and hence into my heart, causing an activation of Wolf-Parkinson-White syndrome, which required an emergency ablation and a seven day hospital stay in May of 1999. All of the cardiologists took me for a goner when I was first admitted to the hospital. They assumed I had advanced heart disease, which turned out not to be the case at all. But I was similarly impaired.

These exposures may only have been a contributing factor to the diseases that have occurred, but they were the activating factor – of that there can be little doubt.

A final issue I would like to raise is that the present tenant, Sara Nicoletti, has informed me that the previous tenant in 2235 moved out because she was being made sick by mold in that unit, which is the very unit now to be drastically renovated. I say drastically, because one look at the building reveals that it is in very bad shape. It is highly unlikely that the contractors will abide by their renovation permit. It is much more likely that they intend to demolish the structure and build anew, leaving the neighbors with a half-demolished building for an extended period of time, while the applicants apply for a demolition permit.

In any case, the present structure is filled with mold, and any extensive renovation will spread those mold spores in a radical way. If the debris is thrown haphazardly on the ground and watered daily, as the conditions imposed by ZAB now require, the mold will grow astronomically and pose a very serious health hazard.

This is one more very serious reason for the City Council to reject the proposal of ZAB and impose requirements of strict enforcement of the Berkeley Municipal Codes Sections cited above, as recommended by the Acting Health Officer. Moreover, the Council should require an inspection of the building to determine if it is substandard, such that it cannot be renovated, but must be demolished.

The Council should also consider the arguments presented by Sara Nicoletti and her attorney Matthew Siegel, but also by me, to the effect that the owner/landlord of 2235 Derby Street intends by this "renovation" to deliberately make life miserable for her existing tenant and in the process all other tenants in the building next door (we have nine units). The owner/landlord has just failed in her attempt to evict Sara Nicoletti lawfully and she is now planning a constructive eviction, just as our landlord did to us at 2826 Telegraph Avenue. The unlawful detainer against Sara Nicoletti was defeated on summary judgment and the owner/landlord was assessed \$27,000 in attorney's fees. You can bet your bippy she is now seeking revenge in the worst sort of way. The unlawful detainer was Alameda County Case No. BG05204709.

In summary, what I am demanding, for the sake of my health and continued existence, as well as for the well-being of my neighbors, is that the contractors be required to behave decently in all respects and to leave the premises in a decent and habitable condition each and every night, that all debris be placed in closed containers and stored away from our windows, and that the grounds then be vacuumed and watered down to remove any remaining dust of renovation debris. Given that they are planning to be there, right outside our bedroom windows, for over six months for this renovation and then another twelve months for the already approved renovation of the main building, this is the only way that I will not be made sick or forced to leave my apartment, with nowhere else to go. I have Section 8 and it is hard to find another apartment that is environmentally acceptable.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Mutnick". The signature is written in a cursive, flowing style.

Peter J. Mutnick, Appellant  
2227 Derby St. #3  
Berkeley, CA 94705  
510-540-7401

Please see the two-paged attached e-mail from Vicki Alexander, Acting Health Officer for the City of Berkeley.



Print - Close Window

From Alexander, Vicki Fri Nov 4 15:34:49 2005

**X-Apparently-To:** pjmutnick@sbcglobal.net via 206.190.37.104; Fri, 04 Nov 2005 15:44:05 -0800

**X-Originating-IP:** [209.232.44.26]

**Return-Path:** <valexander@ci.berkeley.ca.us>

**Authentication-Results:** mta803.mail.scd.yahoo.com from=ci.berkeley.ca.us; domainkeys=neutral (no sig)

**Received:** from 207.115.57.40 (EHLO ylpvm09.prodigy.net) (207.115.57.40) by mta803.mail.scd.yahoo.com with SMTP; Fri, 04 Nov 2005 15:44:05 -0800

**X-Originating-IP:** [209.232.44.26]

**Received:** from mx2.ci.berkeley.ca.us (mx2.ci.berkeley.ca.us [209.232.44.26]) by ylpvm09.prodigy.net (8.12.10 083104/8.12.10) with ESMTP id jA4Nh5B4006710 for <pjmutnick@sbcglobal.net>; Fri, 4 Nov 2005 18:43:05 -0500

**Received:** from exfe1.berkeley.root ([10.1.70.83]) by mx2.ci.berkeley.ca.us with InterScan Messaging Security Suite; Fri, 04 Nov 2005 15:44:02 -0800

**Received:** from COBEXVS1.berkeley.root ([10.1.70.41]) by exfe1.berkeley.root with Microsoft SMTPSVC(6.0.3790.1830); Fri, 4 Nov 2005 15:34:49 -0800

**X-MimeOLE:** Produced By Microsoft Exchange V6.5.7226.0

**Content-class:** urn:content-classes:message

**MIME-Version:** 1.0

**Content-Type:** multipart/alternative; boundary="----=\_NextPart\_001\_01C5E198.58DFCF16"

**Subject:** FW: Citizen Concern

**Date:** Fri, 4 Nov 2005 15:34:49 -0800

**Message-ID:** <51B31566EF476948AE25E1637B99911A97A1FA@COBEXVS1.berkeley.root>

**X-MS-Has-Attach:**

**X-MS-TNEF-Correlator:**

**Thread-Topic:** Citizen Concern

**Thread-Index:** AcXhIERrNQW6VYkhQEqtg9SpKF1OwAA+yFw

**From:** "Alexander, Vicki" <VAlexander@ci.berkeley.ca.us>

**To:** pjmutnick@sbcglobal.net

**X-OriginalArrivalTime:** 04 Nov 2005 23:34:49.0477 (UTC) FILETIME=[5905FB50:01C5E198]

**X-imss-version:** 2.033

**X-imss-result:** Passed

**X-imss-scores:** Clean:99.90000 C:2 M:3 S:5 R:5

**X-imss-settings:** Baseline:1 C:1 M:1 S:1 R:1 (0.0000 0.0000)

**Content-Length:** 1753

Hi Mr. Mutnick:

Below is the e-mail that I sent to planning. I discussed this with Mr. Ramirez and we thought this was the best way to support your legitimate cause.

Thank you for contacting us.

"Without Struggle, There is no progress" . . . Fredrick Douglass

**Vicki Alexander, M.D.,MPH**  
**Acting Health Officer**  
**Director, Maternal Child and Adolescent Health**  
1947 Center Street  
Berkeley, CA 94704

**PHONE:** (510) 981-5301  
**FAX:** (510) 981-5345  
**E-Mail:** valexander@ci.berkeley.ca.us  
**Cell:** (510) 579-6501

-----Original Message-----

**From:** Alexander, Vicki  
**Sent:** Friday, November 04, 2005 3:06 PM  
**To:** Rhoades, Mark; Marks, Daniel S.; MacQuarrie, Joan  
**Cc:** Ramirez, Manuel; Dailey, Lynda  
**Subject:** Citizen Concern

Hi All

I have reviewed the case of Mr. Peter Mutnick and his medical records. In my medical judgement there is a legitimate concern in his case. I encourage you to strictly enforce the Berkeley Municipal Code, Sections 12.32.020, 12.32.030 and 12.40.030 in this instance.

Thank you for your attention to this matter. Please include this e-mail in your documentation to Council on November 15, 2005.

"Without Struggle, There is no progress" . . . Fredrick Douglass

**Vicki Alexander, M.D.,MPH**  
**Acting Health Officer**  
**Director, Maternal Child and Adolescent Health**  
1947 Center Street  
Berkeley, CA 94704

**PHONE:** (510) 981-5301  
**FAX:** (510) 981-5345  
**E-Mail:** valexander@ci.berkeley.ca.us  
**Cell:** (510) 579-6501