

Ken Sarachan
2401 Telegraph Ave.
Berkeley, CA 94704

September 6, 2011

Mayor Tom Bates
2180 Milvia St.
Berkeley, CA 94704

For the Attention of the City of Berkeley City Council

Mayor Tom Bates,

I appeal to you to prevent the Berkeley Inn project from crashing to the ground ending in an ignominious demise. I have many years of work and millions of dollars invested and millions of dollars more in lost opportunity costs relying on my contract with the City of Berkeley. To have the council vote to allow the City Attorney to try to break our contract and collect liens without even getting a chance to defend myself would be the ultimate betrayal. You know me well enough to know I would spend all the resources necessary to provide a maximum defense of the contract in court. The results being that there would be no building or any progress for many years at the Berkeley Inn Site.

You have told me that this project is very important to you. All the significant progress made so far has been with your help. The Berkeley City council passed a resolution 59.832 was on Dec. 8, 1998 with a 7-1 vote which defines all the major terms of the contract between the City of Berkeley and Ken Sarachan. My lawyer and I spent 4 years lobbying the staff to prepare a contract to put in effect the terms of the resolution with no success. Finally, you got elected as mayor and the contract was finally signed in 2003. In 2004-6, we recognized that a better and economically sound project should include the Wooley House and the adjacent Galaxxi Building. So with your approval as well as the City Manager's consent I bought those properties and combined them with the Berkeley Inn Site for a single development site. In 2007, I submitted plans for the "Pagoda Building", "The Greenest Building in a Green City".

So what has happened to our momentum in the years 2008-2010? This project's critical path since 2007 has been is to get the Wooley House moved. In Dec 2005, I signed a contract with John Gordon to move the Wooley House to his parking lot located behind Peet's Coffee on Dwight Way. This is only 1 block from the Wooley House's current location. In order to move the house the City Staff (the owner cannot make this decision), must decide on what level of CEQA Report (negative declaration, full EIR, categorically exempt, etc) needs to be prepared. The staff has been working on this issue for several years. In 2009, when it seemed like they would choose a Negative Declaration, I was instructed by Dave Fogarty and the planning director to prepare a thorough historical study of the Wooley House. With the help of Anthony Bruce of

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plan

BAHA and Dave Fogarty, we prepared a long exhaustive report which includes everything that is known about the history and architecture of the Wooley House. This whole delay in the Pagoda Project is really due to the Planning Departments' lack of competence to make a decision and get work done. I have tried several times to convince the Planning Department to allow me to hire the consultant to do the CEQA report. My "partner" Dana Ellsworth was allowed to hire her own consultant and did her own CEQA study several years ago for moving the "Blood House" to Dwight Way. She now is several years ahead of the City of Berkeley Staff and extremely eager to get her project back on track. It has been suggested by Dana and John Gordon and others that I hire the same consultant that Dana used in her CEQA Report for the Blood house. He is already familiar with every aspect and local condition and could quickly together with my historical study of the Wooley house do any type of CEQA study that the City Attorney and Planning Director instructed him to do. This whole CEQA impasse could easily have been completed and resolved 2 or 3 years ago. Instead, Dan Marks decided that I could not be trusted with expediting these matters. He decided that he must make all decisions regarding choosing the consultant. Finally, last year after several preliminary meetings held by staff, John Gordon and I were invited to a meeting with members of the planning, legal staff as well as other staff members in November 2010. At this meeting, it was decided that I should pay a \$25,000 deposit to allow the city to hire a consultant to prepare the CEQA documents. On July 28, 2011, I received a letter from Greg Powell. The first paragraph of this letter documents the monies that have been paid to the City of Berkeley.

In August, I talked to Greg Powell. He said he was curious and eager to see my new design. I said I would have plans for him to see by the end of August. It was a short but friendly conversation, no ultimatums, no foreshadowing of the meeting you are having today. On Aug 26, I emailed Greg Powell that I had plans ready to show him. He emailed back the next day that I should just email the plans to him. So this was done in full compliance to his letter.

I think the whole "crisis" starting in April 2011, is a communication problem. In April, I met with Dave Fogarty for probably the 50th time about the Wooley House. Dave and I have known each other for many years; he as always has been a liaison between me and the City Staff. I trust Dave Fogarty and consider him a friend of mine. I said Dave; it's been more than four years since I created the Pagoda Design. A lot has changed since 2001 with both the economy of Telegraph Ave and I am older. I think I'm coming around to your views and the city manager views on the project. The new design would have 10-15 more apartment units. The massing would be a rectangular solid instead of an inefficient low density unusual design as in the "Pagoda" plans. The new building design would be a U-shape with the open part facing south just like in the old Berkeley Inn. The greater number of apartment units would make the project more acceptable to banks for financing and appeal to other developers. And actually there would be more square footage for green open space on the roof. Dave said something like what do you want me to do with this. I said, "Dave, here is my problem. I'm supposed to complete the remaining miscellaneous items on the 'Pagoda Project' for Zack Cowen in 60 days but Robert McGillis has a full time day job now. So should I have him work on the "Pagoda" items or the new design which you and I now prefer? Dave said he would get back to me. A few days later he told me to work on the new design and to go see Patrick

Kennedy (I had told Dave previously that Patrick Kennedy had written me a letter saying that he was still interested in possibly being involved in a co-venture at Haste & Telegraph.) Dave said to work on the new plan and that Kennedy knows how to get things done in Berkeley, and to meet with him as soon as possible.

On July 19, I got an email from Dave Fogarty (Exhibit B) on July 14; I sent the following email in response (Exhibit C). The purpose of Dave's request and my immediate response is that we did not want to do anything to mess with the City of Berkeley's responsibility to find and hire a CEQA consultant and finally get the ball rolling. The CEQA Report if they ever find a consultant and "decide between a negative declaration or a EIR, has 99% content about moving the Wooley House and restoring the Wooley House but may be 1% or less of the document is about the general scope of the replacement project. My email on July 19, explained that basically the new revision has basically the same scope as the 2007 Pagoda Plans with 10-15 more units. I had been talking about merchant parking with Dave at an earlier meeting. I raised the issue only as a "trial balloon" I did not insist on parking. It's probably too expensive; I certainly am not going to push parking if it is going to delay anything. So, I agree with everything Greg Powell says in his letter on July 28, 2011, except for the part about not communicating the scope of the new design. I don't think Greg Powell knew about my email response to Dave Fogarty. This I believe is at the heart of the miscommunication this summer.


I hope now you can see there is no need for an all out war. I don't need anymore pressure or incentives or law suits. I have complied with everything Greg Powell demanded in his letter. I can promise you not one day of critical path will be lost because of Ken Sarachan. I will have a 100% completed application for the revised project before I get the final legal right to move the Wooley House. In other words, before the consultant finishes his report and the City legally endorses it.

Tom, I am only one person. I would rather spend my energy and time finishing the remodeling of Cody's Books and working on the revised plans for the Berkeley Inn Site. I enjoy spending money building things like my buildings at Durant & Telegraph and Channing & Telegraph, which won the BAHA award for Best Remodel of 1995. But every organism has a right to defend itself. I've promised you (you did not solicit this promise, I volunteered it) that I would never publically criticize Berkeley Staff as long as they worked fairly with me. I have kept this promise even though some times it has been hard to contain my frustration. This action proposed in a closed meeting is unfair. I hope you have the power to prevent it from being adopted.

Kenneth Sarachan
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Berkeley, CA 94704
T: 510-848-9018
F: 510-848-9052
Kenneth@rasputinmusic.com

From: Marks, Daniel S.
Sent: Tuesday, April 12, 2011 2:35 PM
To: Fogarty, David
Subject: FW: 110329 Sarachan / Telegraph @ Haste Building / Planning Application

The following is what Zach sent to Sarachan's attorney. We need a new signed application form and application fee deposit immediately – this went to Mr. Smith two weeks ago with the understanding that someone would be in within the next two weeks. We certainly cannot wait much longer because proceeding with the EIR is dependent on having an application that the EIR is addressing. As I understand it, we have not extended the "right to cure," and lack of movement soon on the application would leave us where we were a few weeks ago.

 As we have noted before, we do not need to have a "complete application" to proceed with the EIR – just an application form and fee deposit. We would be happy to meet with Mr. McGillis to review any further items he needs to provide a "complete application" – but not until we have an application form and deposit to bill against. Just to be clear, the \$25,000 Mr. Sarachan has given us is only for the EIR – we must also have an application and fee deposit (\$10,779.57) to make more progress on either the EIR or the project application.

From: Cowan, Zach
Sent: Tuesday, March 29, 2011 12:53 PM
To: Harold P. (Peter) Smith (Dhillon & Smith)
Cc: Kenneth
Subject: RE: 110329 Sarachan / Telegraph @ Haste Building / Planning Application

Peter,

I have confirmed with the Planning Department that it still has all of the application materials previously submitted.

In order to begin with the EIR as soon as possible, the Planning Department suggests that Mr. Sarachan or Mr. McGillis send a letter to the City (addressed to Mr. Powell, with a copy to me) asking that the previous application be reinstated, accompanied by a check for the amount (\$10,779.57) stated in Mr. Powell's June 2009 letter, of which you now have several copies. The Planning Department will then give you a new application number and send a new incomplete letter based on the previous incomplete letter. (Mr. McGillis need not wait for that letter.)

The City will then get started on the EIR, even without a complete application. However, if we do not have more information on the project soon, we will send a letter indicating that the EIR will be based on an assumed maximum envelope project for the site. Please be advised that delays in completing the application, especially beyond 60 days, may result in the City having to prepare the EIR based on assumptions about Mr. Sarachan's project, which in turn may result in further delays if the project as ultimately proposed differs from those assumptions.

Zach Cowan

Kenneth

From: "Fogarty, David" <DFogarty@ci.berkeley.ca.us>
To: "Ken Sarachan" <kenneth@rasputins.com>; <kenneth@rasputinmusic.com>; "Patrick Kennedy" <pck@panoramic.com>
Sent: Monday, July 18, 2011 12:23 PM
Subject: Urgent need to move forward the Telegraph & Haste project

Ken and Patrick,

Ken has told me that he has an architectural proposal for the building that he can support and wants to meet with Patrick about it. I urge you both to meet sometime this week and conclude an arrangement that will result in a development application for Telegraph and Haste.

This is urgent because the City Manager has convened a staff meeting for next week to decide what to do about the City contract with Sarachan. The City contract says that we will waive the liens we hold against the site if and when a mixed use building containing housing is constructed on the site. However, the contract also gives the City the call in the liens if there is no progress toward completing the objectives of the contract, housing over retail space and elimination of the vacant lot. I have informed the City Manager that Ken was negotiating with Patrick Kennedy and get asked all the time about why nothing has happened.

Please meet this week and send me an email reporting progress so I can reassure the City Manager that this project is moving forward. As I have told Ken, it would also be helpful to have a short description of the project (i.e., number of units, size of building) for the EIR the City is doing on the environmental implications of the moving of the Wooley House. Technically, the EIR is part of Ken's still incomplete application for development at Telegraph and Haste and the EIR requires a description of what that project will be.

David Fogarty
Economic Development Project Coordinator
City of Berkeley Office of Economic Development
2180 Milvia
Berkeley, CA 94704
510-981-7534

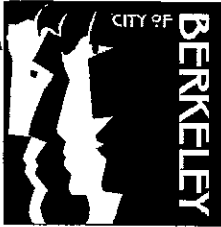
From: "Kenneth" kenneth@rasputinmusic.com
To: <DFogarty@ci.berkeley.ca.us>
Sent: Tuesday, July 19, 2011 4:20 PM
Subject: Parking on Telegraph

Dave,

The Berkeley Inn Site Project is mixed use with retail on the ground floor and 5 floors of housing above. There will be 45-55 units. The roof will be a park like space usable for special events on the weekends. The footprint is approximately 18,000 sq ft.

I believe with the demise of the Anna Head Parking Lot businesses in the area are suffering from the lack of perceivable easy access parking. Dave, if you ever want to attract a new anchor business like "Forever 21" or "Apple Store" to Telegraph Ave. To replace the dying record/ book industry you will need more parking. The problem is that developers I'm talking to believe that underground parking is too expensive to build.

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Planning and Development Department
Land Use Planning Division

Exhibit D

July 28, 2011

Ken Sarachan
Rasputin Music
2403 Telegraph Avenue
Berkeley, CA 94704

RE: 2501 Haste Street - Use Permit #11-10000013

Dear Mr. Sarachan:

This letter is regarding your application to construct a new mixed-use project on a site that comprises three parcels of land at the corner of Telegraph Avenue and Haste Street (2433 Telegraph, 2503 and 2509 Haste). Since the initial application submittal in the fall of 2004, a comprehensive redesign in 2007, and the submittal of a new application form and a payment of \$10,779.57 in application fees in April 2011, the City has not received all necessary materials to deem this application complete. To complete your application, I refer you to my March 17, 2011, letter to you that identified the information and materials needed to present a complete application.

As you are aware, to comply with CEQA, at least a Negative Declaration and very likely an EIR will be required to allow your project to proceed. On March 24, 2011, we received your deposit for \$25,000 to allow the City to hire a consultant to prepare the CEQA documentation. In April, I learned that you were considering teaming with a local developer to explore a project much different from the project you first presented to the City in 2007 (the so-called Pagoda Building); however, we also understood that you had not officially abandoned this original project design. At that time, you indicated that you would make this decision by the end of June 2011. To facilitate the efficient and most cost-effective preparation of this CEQA document, on April 29, 2011, you were asked to provide a complete description of your project. To date, the City has not received a response to this request, nor have you informed the City of your decision regarding which project you intend to pursue. Thus, given the lack of project details, the City is unable to commence preparation of this CEQA document.

On March 28, 2011, your attorney, Peter Smith, requested a 60 day extension of time for you to effectuate a cure under your agreement with the City concerning development of 2501 Haste Street. The City did not agree to such extension, but did forbear with respect to enforcement (i.e., foreclosure) in light of apparent progress on your part. It now appears that any progress has halted. The City does not intend to forbear indefinitely. Accordingly, please submit a complete description of your project, including project plans, no later than August 26, 2011.

Please contact me at (510) 981-7414 or via e-mail gpowell@ci.berkeley.ca.us, if you have any questions. Thank you.

Sincerely,

Greg Powell
Senior Planner, Land Use Planning