

From: [The Mannings](#)  
To: [NANCY McPeak](#)  
Subject: 2017-4296 Big O Project  
Date: Wednesday, May 03, 2017 2:22:19 PM

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Please forward this to the Planning Board:

It is discouraging to note in Exhibit 1 for the May 8, 2017 Planning Board meeting that "parking be restricted to the approved site plan" or words to that effect appear in

- 1) the Original Use Permit No. 79-3 on 3/19/1979
- 2) a letter to Henry Cohen 1/28/1982
- 3) a letter to Henry Cohen 2/3/1989 and Alameda Planning Board Resolution 1926 stating that " Within 60 days of the date of approval of this Use Permit, **applicant shall find an alternative long-term parking site for customers cars, as well as for employees.**
- 4) letter to Henry Cohen 5/10/1990
- 5) staff memorandum 7/13/2015
- 6) staff memorandum 11/9/2015
- 7) staff memorandum 11/28/2016
- 8) non compliance letter to Gary Voss and Guido Bertoli (cc. Jay Garfinkle, property owner) 1/19/2017
- 9) non compliance letter to Gary Voss and Guido Vertoli (cc. Jay Garfinkle, property owner) 2/27/2017

Please note that I strongly disagree with Jay Garfinkle's assertion in his 11/14/2016 letter to the Planning Board that "there is, in fact, no negative impact on the neighboring residential community related to parking availability..." This is simply not the experience of someone living on Park Avenue, as I do.

I ask you not to be misled by the photographs and documented street parking available in the Garfinkle exhibit dated 5/8/2017. Note that five of their parking surveys were done at 1 PM or 2 PM. Only two were conducted in the morning and none after 9:45 (probably because residential parking is more impacted by Big O or Big Discount as the morning progresses) and no surveys were taken after 2:30. As an investigator you would need to ask the Garfinkle family if there were any surveys which they are not reporting (or better yet, conduct your own survey), but the discussion of parking availability is a ruse--they have already been shown to be in non-compliance with the requirement that parking be restricted to the site of their business--**for customer cars and for employee cars.**

Big O Tires has sent you a letter dated 3/3/2017 in which they plan to secure overflow parking at 2501 Santa Clara Ave. Are they asking you to believe that they will have an employee walk 10 minutes each way (20 minutes total) to park one car waiting for service or pick up? That proposal cannot be trusted. **Big O never complied with the parking restrictions of their use permit for over 35 years!**

For the above reasons, I ask you to vote in favor of your resolution that "This use permit and the non-conforming use of the land for automobile repair shall terminate within 60 days of final action by the City of Alameda."

James E. Manning  
1167 Park Avenue  
Alameda, CA 94501



## 1200 Park St. Conditional Use Permit Hearing (CUP)

May 8, 2017

### The Property Owner's Right to Cure a Violation

The November 28th Planning Board meeting instructed the Planning Department to determine if our tenant at 1200 Park St. now known as "Big Discount Tire Pros", was in violation of the CUP under which they operate. As the owners of the property, we set out immediately to ensure that the tenant stayed in compliance.

With the recent distribution of the agenda by City Staff, we discovered on May 2nd that Condition #3 of the CUP, which is the source of contention, has apparently been misconstrued for years by Staff and all interested parties including, Art Thoms and his attorney. Our efforts to understand the alleged violations and to thus address a cure for them, is what led us to the conclusions we state below.

On November 29th, our attorney, Robert Lane, wrote the first of four letters to our tenants, the owners of the business, Gary Voss and Guido Bertoli, (Exhibit A, pages 1-3, 5-6), demanding that they comply with all of the CUP's requirements. We wrote again on December 6th, where we reinforced our demand and asked them to confirm they were using the property on Oak St. that brought them in compliance with Condition #2 of the CUP. We did not get a response to either letter.

On January 19th, Andrew Thomas sent an "Official Notice of Violation" of Condition #3: *"Applicant's business vehicle(s) shall be store on the site, not on adjacent residential streets."* Jay Garfinkle, representing the owners was "cc'd" on this letter, but he never received a hard copy of it. He only learned of this when talking to Planning Department Staff on February 1<sup>st</sup>. He received an email copy of it that day, making this the first formal notice we received. This changed the dynamics for us as we now had a legal authority with enforcement capability, demanding immediate compliance.

As the owners of the CUP and with a pending sale to Big O Corporation on the line, we endeavored to cure the violation, knowing full well that our tenant had a powerful incentive to continue violating it so the CUP would be revoked and they could avoid having a major competitor take over their old location. For 35 years people have been coming to 1200 Park St. to buy tires, knowing the operation as "Big O Tires", not "Big Discount Tire Pros". Continued non-compliance would reward them handsomely.

On February 9th, we wrote another letter to the tenant, citing the notice from the City. This time we copied their attorney and demanded a response by the 15th to tell us what they were doing to cure the violation.

On February 21, Jay received a letter from Guido. (See Exhibit A, page 4) He never responded to the question about compliance. Instead he said "We are planning a



meeting with the City to go over these points. We will keep you apprised.” Not only did we never hear from them again, but to this day, they never met with the City.

At this point in time, we had serious discussions about evicting them for breaching their lease. Before we did that however, we wanted to be absolutely clear that the terms of the CUP would stand up in court. What is a “business vehicle”? Is this owned by the business or does it include any vehicle related in any way to the operation of the business at 1200 Park St.? What does it mean to “store” vehicles? Is this the same as short term parking or does this refer to putting cars into long term “storage”. Who “stores” their car when they leave it on the street for a few hours? Our attorney contacted Assistant City Attorney Farimah Brown by email on Tuesday, February 21st. She replied the next day requesting that they talk on Monday the 27th. That conversation never took place and our attorney tried several times after that to reach her by phone without success.

On March 1st, Ben Garfinkle, after having witnessed and photographed Gary Voss retrieve a parked car on Park Avenue, approached Gary on the premises of the business. During that conversation, Gary admitted to continuing to use the neighboring streets because it was a “pain in the ass” to take the cars over to their new Oak St. facility. He also admitted that he knew nothing about any meeting with the City to discuss the issues. Ben reminded him of what we thought were the parking requirements of the CUP, which Gary knows by heart, and that we, the owners, would have to consider what action we would take to get them to comply.

Still lacking legal clarity from the City, we sent them our 4th letter on March 7th, letting them know we had eye-witness evidence of what we thought was non-compliance, cited several of Gary’s incriminating statements and officially notified them that they were in breach of the lease. We asked for a response by March 13th.

Overlapping the timing of these events, our attorney sent another email on March 6th to Ms. Brown expressing his frustration with being unable to connect with her. On Tuesday the 7th, she wrote that they can talk on Thursday, the 9th. That never happened because she was not available. He tried several more times to reach her with the same results.

On April 3rd he wrote to City Attorney Janet Kern, complaining about the situation. He mentioned that he had managed to have one conversation with Ms. Brown who admitted that she had not looked at his questions but promised we would hear on the following Tuesday. Of course this didn’t happen either. On the same day he wrote an email to Mayor Spencer expressing his disappointment with the City Attorney’s office. The next day, April 4th, he received replies from the Mayor and Ms. Brown, who told him, “Ms. Kern, Mr. Thomas and I are working on these issues and we will be in touch as soon as we can.” Still no response. (See Exhibit B, pages 2-4)



We waited patiently until April 17th when Mr. Lane sent another email to all of the parties, which now also included City Manager Jill Keimach, asking again for the definitions we have been trying to get since February 21st.

On the 19th, Andrew Thomas replied for Ms. Brown, confirming that the hearing date had been moved to May 8th and he assumed that Big O would tell the owners! As the Owners are the ones with the ultimate standing and the ones who have the most to lose, wouldn't you think that the Owners would be on the City's lists for ALL notices of any kind relative to this Property? As to the substance of our inquiry, Mr. Thomas said that there is a long history of this CUP with what he termed to be no misunderstandings about the intent or scope. He said that using "on street parking to store vehicles that have been left in the care of this business is not allowed". (See Exhibit B, page 1). Our request to get clear definitions of the two items, "business vehicles" and "store" (as in "storage") remained murky until we found evidence to the contrary on May 2<sup>nd</sup> by way of Exhibit 1 to the Staff Recommendation. We were thinking that "business vehicles" would be defined somewhere in City policy. Instead we get no such reference, only his explanation of his understanding which did not mention employee's cars. Employee's cars would not be "left in the care of this business". Can they park on the adjacent streets? The word "store" was defined by the word "store". At this point we realized we were not going to get anything better from the City so it was still risky to evict our tenant for breaching their lease due to non-compliance with the CUP.

In the meantime and without our knowledge, a second apparent notice of violation was sent only to the Lessee on February 27<sup>th</sup> of this year. On April 17th our attorney received a letter dated April 14th from the Tire Pro's attorney, Gregory Brandt (Exhibit 1, page 7), claiming that they were in compliance despite our suggestion to the contrary based on the City's letter of January 19th. We only found out about the February notice of violation on May 2nd by way of Exhibit 1 of the Staff report for the May 8th Board Meeting. Again the Owners/Lessors received NO NOTICE!

In the face of the Lessees' counsel's assertion that they are in full compliance, our attorney sent their attorney an email on May 3<sup>rd</sup>, (Exhibit 1, page 8), demanding that the Lessees' counsel or the Lessees appear at the hearing on May 8<sup>th</sup> to explain why they are in full compliance.

As the permit owners, we believe we should have the right to cure any alleged violation. From the day after the November Board Meeting until today, we have made concerted, good faith efforts to put a stop to their apparent non-compliant behavior. Little did we know or understand that the Lessee may well be in full compliance with the CUP, since the definitions in the "legislative history" support the Lessee, not the City.

The official notice of violation dated 1/19, a little over 3 months ago, gave us the standing we needed to impose our legal options. Instead of the City working with us to



accomplish this, they have imposed a significant barrier through a false narrative as to the definitions applicable to the CUP; taking 2 months to answer a simple question and even then, leaving us in limbo with a unilaterally expanded definition to suit the purposes of the Staff. It was not until we were given the 104 page history, Exhibit 1 to the Staff Recommendations, that we realized that the City Staff was either not disclosing the true definition of “business vehicle(s)” or chose to ignore this material and perhaps pivotal issue.

See letter of May 10, 1990 at pages 23-24 of Exhibit 1, “Staff has noted that your business vehicle was parked on adjacent residential streets several times a week. This is contrary to Condition No.3. Please make sure that your employees are aware that this vehicle must be stored on your premises.”[Emphasis added]. This is backed up by the photo of the Big O truck at page 15 of Exhibit 1 and the fact that there are no complaints about parking customer or employee cars on the street.

It appears that the history of Condition #3 to the CUP involves only the Lessees’ “business vehicle(s)”, not customer or employee cars, and the City Staff, without authority from the Planning Board or the City Council has unilaterally broadened the scope of that definition. The Lessees, the Owners/Lessors and/or Big O must be given an opportunity to cure any alleged violation, if indeed there is a violation at all.

We as Owners/Lessors of 1200 Park Street, request that this Board find, in the alternative:

1. That there is no violation of the CUP; or
2. If a violation is found, then the Owners/Lessors be allowed to cure the violation by initiating an eviction proceeding and that the initiation of such would constitute a cure, knowing that these Lessees will be vacating the premises in any case by July 31, 2017; or
3. That the Board adopt the Alternative Staff Recommendation and remove the conditions of related to parking.

This business has been in this location for some 35 years, which speaks to its viability as a community asset. To the extent that the Board has continuing concerns and wants to maintain a leash on the business, the Board should recreate the CUP in language that is unambiguous and adopt the proposed CUP as put forward by Big O, Exhibit 2 attached to the Staff Recommendations.

Thank you for the opportunity to be heard on these matters.

Jay Garfinkle and Ben Garfinkle, representing the owners



NOV 30 2016

*R. KINGSBURY LANE CORPORATION  
36 NICHOLL AVENUE  
POINT RICHMOND, CALIFORNIA 94801*

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*ROBERT K. LANE, ATTORNEY AT LAW*

*Phone 510.233.2230  
FAX 510.233.2213  
Email r\_k\_lane@pacbell.net*

November 29, 2016

Guido and Joanne Bertoli  
Gary R. And Katherine D. Voss  
G & J Tires, Inc.  
1200 Park Street  
Alameda, CA 94501

Re: Lease at 1200 Park Street, Alameda, CA  
Compliance with Lease/Conditional Use Permit

Ladies and Gentlemen:

As you are aware, this office represents the Lessor/Owner of the real property at 1200 Park Street, Alameda, California ("Property"). Your Lease contains a covenant to comply with all laws. Mr. Guido Bertoli was present during the Planning Hearing held at City Hall last night and thus is fully informed of the concerns of the residents, the City Staff, as well as the individual Planning Board members relative to your use of the property and your compliance with the Conditional Use Permit ("CUP").

So that you are in compliance with both the Lease and the CUP, please forthwith replace the "no left turn" sign that is large enough to get someone's attention and in a location so as to be fully visible, instruct your employees not to make left turns onto San Jose, refrain from working on vehicles in the lot including the use of car jacks, and so as to avoid further concerns by the City's staff, try to avoid the use of metered parking spaces. The sound created by the intercom appears to be something that you can modify to address the concerns of the neighbors. Although it is not specifically stated in the CUP, it responds to the local residents as a good neighbor would.

Thank you for your immediate and continued attention to these matters. As you know your actions to comply will be monitored by the City and the Lessor will be checking on compliance as well.

Again, thank you for your cooperation.

Very truly yours,



Robert K. Lane,  
Attorney for Lessor  
RKL: bl  
ccc



**R. KINGSBURY LANE CORPORATION**  
**36 NICHOLL AVENUE**  
**POINT RICHMOND, CALIFORNIA 94801**

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ROBERT K. LANE, ATTORNEY AT LAW

Phone 510.233.2230  
FAX 510.233.2213  
Email [r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)

December 6, 2016

Guido and Joanne Bertoli  
Gary R. And Katherine D. Voss  
G & J Tires, Inc. and the GJ & GK Partnership  
1200 Park Street  
Alameda, CA 94501

Re: Lease at 1200 Park Street, Alameda, CA  
Compliance with Lease/Conditional Use Permit

Ladies and Gentlemen:

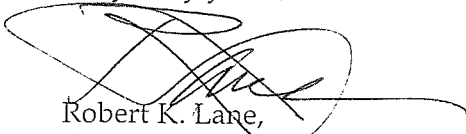
While we have not received any confirmation that you intend to fully comply with the conditions of the Conditional Use Permit and thus the Lease, we trust that you are taking it seriously, including an attempt to lessen the neighborhood impact of your paging system which admittedly is outside the parameters of the CUP, but which recognizes your neighbor's concerns.

It is understood that in compliance with the CUP requirement for long-term parking site you need to notify the City that your Oak Street property is being used for both employee and customer parking. Please confirm to this office that you have so notified the City and that you are in fact using your Oak Street facility for those purposes.

Also, it has been pointed out that your employees are not restricted by the "no left turn" sign, only customers, thus my letter of November 29<sup>th</sup>, in that regard, is so modified.

Thank you for your continued cooperation and I look forward to your confirmation that your use of your Oak Street property for long-term parking has been documented by the City and that you are in fact using that facility for that purpose.

Very truly yours,



Robert K. Lane,  
Attorney for Lessors

RKL: bl  
ccc

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*R. KINGSBURY LANE CORPORATION  
36 NICHOLL AVENUE  
POINT RICHMOND, CALIFORNIA 94801*

FEB 10 2017

*ROBERT K. LANE, ATTORNEY AT LAW*

*Phone 510.233.2230  
FAX 510.233.2213  
Email r\_k\_lane@pacbell.net*

February 9, 2017

Guido and Joanne Bertoli  
Gary R. And Katherine D. Voss  
G & J Tires, Inc.  
1200 Park Street  
Alameda, CA 94501

Re: Lease at 1200 Park Street, Alameda, CA  
Compliance with Lease/Conditional Use Permit/City of Alameda Notice of Violation  
Letter of January 19, 2017

Ladies and Gentlemen:

Please give this office a detailed written update on the status of your cure of the violation(s) of your Conditional Use Permit as stated in the NOTICE OF VIOLATION OF THE CITY OF ALAMEDA MUNICIPAL CODE AT 1200 PARK STREET (PLN14-0134, AS AMENDED), which violation(s) are the subject of the City of Alameda's letter of January 19, 2017 to you, signed by Andrew Thomas, Assistant Community Development Director.

Please respond by February 15, 2017. Failing to receive a written response by that date will trigger further enforcement actions.

Thank you for your cooperation.

Very truly yours,



Robert K. Lane,  
Attorney for Lessor

RKL: bl

Ccc

Cc: Gregory Brandt, Esq.



Guido Bertoli  
1200 Park St  
Alameda, CA 94501

2/15/2017

Jay Garfinkle  
352 Capetown Drive  
Alameda 94502

Jay in response to the letter dated February 9, 2017. We are bringing you up to date on various items that were brought up at the planning meeting.

We have reduced the paging systems volume, we now have two no left turn signs posted, we keep our parking lot opened after hours and Sundays to allow our neighbors to park on our lot at off hours, and we park customers' cars offsite to reduce parking congestion. We find it ironic that approximately two years ago, we had an agreement with you and the trust to park cars at your empty 1125 Park St location while it was vacant, we also agreed to maintain the building from graffiti, that was until you informed us you, and the trust changed your mind and did not want the exposure; even though we would fully insure it. If that was done maybe we would not be in this position with the city. Karma is a funny thing. We are planning a meeting with the city to go over these points. We will keep you apprised.



Guido Bertoli



R. Kingsbury Lane, Inc.  
36 Nicholl Ave.  
Pt. Richmond, CA 94801-3919

March 7, 2017

Guido and Joanne Bertoli  
Gary R. And Katherine D. Voss  
G & J Tires, Inc.  
1200 Park Street  
Alameda, CA 94501

Re: Lease at 1200 Park Street, Alameda, CA  
Compliance with Lease/Conditional Use Permit/City of Alameda Notice of  
Violation Letter of January 19, 2017

Ladies and Gentlemen:

On February 9, 2017, this office sent you and your legal counsel a letter requesting "a detailed written update on the status of your cure of the violation(s) cited in the City of Alameda letter to you dated January 19, 2017", primarily on the issue of parking.

To date no response has been received by this office from either you or your legal counsel. However, Guido Bertoli did send a letter to Jay Garfinkle dated February 15, 2017 impliedly suggesting that your business was/is in compliance with the CUP and that you "are planning a meeting with the city to go over these points."

To date NO such meeting has been arranged to the knowledge of the Lessor/Owners, nor is your business in compliance with the CUP which, in turn, puts you in breach of your Lease.

One of the Lessor/Owners, Ben Garfinkle was at the property on Wednesday, March 1, 2017 and photographed Gary Voss (co-owner of the business) retrieving a customer's car parked in violation of the CUP on Park Avenue. When questioned, Mr. Voss volunteered that the business at 1200 rarely uses the other site at Oak Street to park cars because it is a "pain in the ass". Mr. Voss further admitted that when they bought the Oak Street property, they had no intention of parking cars from the 1200 business at the Oak Street location.

Mr. Bertoli's letter of February 15, 2017 to Mr. Jay Garfinkle states that "we park customers' cars offsite to reduce parking congestion", which statement is either patently false if it means to imply that you are currently using your Oak Street property for the parking of customers' cars in compliance with the CUP or it is an admission that you are parking customers' cars on neighboring streets in violation of the CUP.

In either case, it is clear that you are intentionally and knowingly in breach of your Lease and interfering with the Lessor/Owner's contractual relations with their Buyer of the 1200 property, which you are well aware is your former franchisor, Big O Tires. You must certainly also be aware that your intentional and continual non-compliance with the CUP jeopardizes the Buyer's retention of the CUP. Your motive is transparent, which is to preclude competition from Big O at the 1200 Park Street site, while you continue your tire business at your new Oak Street location.



Gary and Guido Letter  
March 7, 2017  
Page 2.

If the Lessor/Owner of 1200 Park loses Big O as a Buyer of the property as a result of a revocation of the CUP caused by your refusal to comply with its conditions, you will be subject to a lawsuit for the tort of Interference With Contractual Relations which carries with it the potential of having punitive damages assessed against you as well as the Lessor/Owner recovering their attorney's fees since you are in breach of the Lease.

Mr. Garfinkle indicated that Mr. Voss said he is not worried about the competition coming from Big O because you intend to out advertise them, although you apparently admitted that you have already lost some customers since losing the Big O franchise.


Mr. Bertoli's letter asserts a further falsehood in that, to the best of our knowledge, no "city meeting" has been set up and apparently there was never any intention to set up such a meeting since Mr. Voss, the co-owner of the business with Mr. Bertoli, told Mr. Garfinkle that he didn't know anything about any such planned meeting.

In short, you are in breach of your Lease and run the substantial risk of being Defendants in a tort/contract lawsuit.

If you believe you are in compliance with the parking requirements of the CUP, we strongly suggest that you state your grounds for this belief in writing and call an immediate meeting with the City of Alameda, as you said you were going to do, to review the matter with them and get the City's acknowledgment that you are in compliance with the CUP. As the Lessor/Owner has a substantial stake in this matter, we request that we be advised of and invited to that meeting.

This office needs a written response by this Monday, March 13, 2017.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Lane", with a long horizontal line extending to the right.

Robert Lane, Attorney  
For Lessor/Owner

RKL: bl

ccc

Cc: Gregory Brandt, Esq.  
Andrew Thomas, City of Alameda  
Farimah Brown, Assistant City Attorney



April 14, 2017

R. Kingsbury Lane  
36 Nicholl Ave.  
Pt. Richmond, CA 94801-3919

**Re: Lease at 1200 Park Street, Alameda, California  
Response to Your March 7, 2017 Letter**

Dear Mr. Lane:

I am writing to respond to your March 7, 2017 letter. Big Discount Tire Pros is currently in compliance with all parking obligations of its Conditional Use Permit ("CUP") and other applicable requirements. As you mention in your letter, Gary Voss had a conversation with Ben Garfinkle on March 1, 2017. But, your description of that conversation is incorrect and your conclusions about facility operations are also incorrect. Mr. Voss told Mr. Garfinkle that, although it is a "pain" to do so, vehicles that are at the facility for more than an hour after work is completed are relocated to the Oak Street lot. This is the common, ongoing and regular practice used by Big Discount Tire Pros. The facility uses a valet service to transfer the cars back and forth and is in compliance with the requirements of the CUP. Mr. Bertoli's statement cited in your letter, that the facility parks customers' cars off-site, is accurate.

Occasionally a customer will request that an employee move the customer's car to the street temporarily so that the customer does not have to navigate the store's parking lot upon picking up his or her vehicle. But, as required by the CUP, the facility uses off-site, long-term parking and does not store any business vehicles on adjacent residential streets.

As for the other claims in your letter, neither Mr. Bertoli nor Mr. Voss, nor anyone associated with the business, has interfered with your client's sale of the real property. While I do not believe that it is necessary to respond to your claims about potential competition with Big O Tires, advertising strategies or customer retention, our clients will continue to comply with the terms of their lease, the CUP and all other applicable requirements.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Greggory C. Brandt

cc: Gary Voss and Guido Bertoli



## Ben Garfinkle

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**Subject:** FW: 1200 Park Street: Your Letter of April 14, 2017 to this Office

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**From:** Robert Lane [mailto:[r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)]

**Sent:** Wednesday, May 03, 2017 11:25 AM

**To:** Gregory Brandt

**Subject:** 1200 Park Street: Your Letter of April 14, 2017 to this Office

Greg: I reached out to you by phone twice yesterday to discuss your letter of April 14th without return call until this morning shortly after 8 a.m., indicating that I could reach you around Noon today. Thus this email to frame the issues:

Your letter of April 14th takes the strong position that your clients are "...in compliance with all parking obligations of its Conditional Use Permit ("CUP") and other applicable requirement" and further states that "...our clients will continue to comply with the terms of their lease, the CUP and all other applicable requirements".

As you know the City gave your clients a notice of violation on or about January 19, 2017. To our knowledge, no response was made from your office or your clients to dispute that claim. Further, as the owners/lessors of the property have only recently discovered, your clients were also notified of alleged violations of the CUP twice in February of this year. In those notices it requests that you call them if you have "questions". Did you ever contact the City to dispute those alleged violations?

If so, were the violations ever withdrawn? If you or your clients had no contact, wouldn't you think it important to dispute those allegations? In the string of my letters to you and your clients re the January 19th notice of violation, the only response was to Jay Garfinkle from Guido (your client and one of the owners of the business) stating that they were in compliance, but there is no evidence of any contact with the City to discuss the matter.

Or did you and/or your clients intentional ignore the matter vis a vis the City, thinking that if the City revokes the CUP, you get rid of the competition of Big O Tires purchasing the property and continuing the tire business?

If that was your reasoning, it lays ample foundation for the owners' lawsuit in tort for Interference with Contractual Relations against your clients.

If you and your clients are acting in good faith and do think that you are in full compliance with the CUP, it behooves you to prove it by appearing at the hearing on May 8, 2017 at 7:00 p.m. in the Planning Board meeting venue in City Hall and testifying to that effect before the Planning Board.

Please advise in writing.

Robert Lane, Attorney for Owners/Lessors



## Ben Garfinkle

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**From:** Robert Lane [r\_k\_lane@pacbell.net]  
**Sent:** Wednesday, April 19, 2017 4:37 PM  
**To:** ANDREW THOMAS  
**Cc:** Farimah Brown; Janet Kern; Jill Keimach; Trish Spencer  
**Subject:** Re: CUP definitions at 1200 Park Street

Andrew: Thank you... I will forward this to the Owners/Lessors and get back to you. Thank you again, Robert Lane

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**From:** ANDREW THOMAS <ATHOMAS@alamedaca.gov>  
**To:** Robert Lane <r\_k\_lane@pacbell.net>  
**Cc:** Farimah Brown <fbrown@alamedacityattorney.org>; Janet Kern <JKern@alamedacityattorney.org>; Jill Keimach <JKeimach@alamedaca.gov>; Trish Spencer <TSpencer@alamedaca.gov>  
**Sent:** Wednesday, April 19, 2017 2:36 PM  
**Subject:** Re: CUP definitions at 1200 Park Street

Hello Mr Lane. Ms Brown is not in the office this week, but I am available to discuss the existing use permit with you at any time this week.

There is a long history of planning board meetings and public discussions about the conditions of approval for this use.

The use of public on street parking to store vehicles that have been left in the care of this business is not allowed by the use permit. It requires the business to store the vehicles on the site or in a satellite off street location.

This restriction has been discussed at length at numerous public hearings. There has never been any misunderstanding about the intent or scope of this requirement by the operators of the business.

I am happy to discuss this further at any time.

- Andrew.

Sent from my iPhone

On Apr 17, 2017, at 4:21 PM, Robert Lane <r\_k\_lane@pacbell.net> wrote:

Ms. Brown: Though you indicated in your April 4th email that you would get back to me "as soon as we can", I still have heard nothing from any of you relative to my February 22nd inquiry. The City's Definition of these words is very important to the City's perspective of what the current tenants of 1200 Park are doing or not doing relative to the Conditional Use Permit. It is thus imperative the the Lessors/Owners be apprised of the City's position and support for that position so the Lessors/Owners know what steps to take to either rectify the status of the Lessee or know that they are in compliance in the eyes of the City. Your email to me of April 4th has not been addressed by you, Ms. Kern, or Mr. Thomas. I would have hoped for a sooner response but please do respond in substance now, given that the April 24th hearing before the Planning Board is upon us.

Thank you, Robert Lane, Attorney for Lessors/Owners



## Ben Garfinkle

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**To:** Robert Lane; Farimah Brown; Janet Kern; ANDREW THOMAS  
**Cc:** Jill Keimach; Trish Spencer  
**Subject:** RE: CUP definitions at 1200 Park Street

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**From:** Robert Lane [mailto:r\_k\_lane@pacbell.net]  
**Sent:** Monday, April 17, 2017 4:18 PM  
**To:** Farimah Brown; Janet Kern; ANDREW THOMAS  
**Cc:** Jill Keimach; Trish Spencer  
**Subject:** Fw: CUP definitions at 1200 Park Street

Ms. Brown: Though you indicated in your April 4th email that you would get back to me "as soon as we can", I still have heard nothing from any of you relative to my February 22nd inquiry. The City's Definition of these words is very important to the City's perspective of what the current tenants of 1200 Park are doing or not doing relative to the Conditional Use Permit. It is thus imperative the the Lessors/Owners be apprised of the City's position and support for that position so the Lessors/Owners know what steps to take to either rectify the status of the Lessee or know that they are in compliance in the eyes of the City. Your email to me of April 4th has not been addressed by you, Ms. Kern, or Mr. Thomas. I would have hoped for a sooner response but please do respond in substance now, given that the April 24th hearing before the Planning Board is upon us. Thank you, Robert Lane, Attorney for Lessors/Owners

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**From:** Farimah Brown <[fbrown@alamedacityattorney.org](mailto:fbrown@alamedacityattorney.org)>  
**To:** Trish Spencer <[TSpencer@alamedaca.gov](mailto:TSpencer@alamedaca.gov)>; Robert Lane <[r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)>  
**Cc:** Jill Keimach <[JKeimach@alamedaca.gov](mailto:JKeimach@alamedaca.gov)>; Janet Kern <[JKern@alamedacityattorney.org](mailto:JKern@alamedacityattorney.org)>; ANDREW THOMAS <[ATHOMAS@alamedaca.gov](mailto:ATHOMAS@alamedaca.gov)>  
**Sent:** Tuesday, April 4, 2017 4:25 PM  
**Subject:** RE: CUP definition at 1200 Park Street

Mr. Lane,

Ms. Kern, Mr. Thomas, and I are working on these issues and we will be in touch as soon as we can.

Farimah F. Brown  
Senior Assistant City Attorney  
City of Alameda  
2263 Santa Clara Avenue, Room #280  
Alameda, CA 94501  
(510) 747-4788  
[fbrown@alamedacityattorney.org](mailto:fbrown@alamedacityattorney.org)

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\*\*\*\*\*

**From:** Trish Spencer  
**Sent:** Tuesday, April 04, 2017 3:20 PM



**To:** Robert Lane <r\_k\_lane@pacbell.net>

**Cc:** Jill Keimach <JKeimach@alamedaca.gov>; Janet Kern <JKern@alamedacityattorney.org>; Farimah Brown <fbrown@alamedacityattorney.org>

**Subject:** RE: CUP definition at 1200 Park Street

Dear Mr. Lane,

Thank you for your email. By copy of this email, I'm sharing yours with our staff.

I appreciate you taking the time to include me in your attempts and am hopeful that this will be amicably resolved.

Sincerely,

Trish Spencer  
Mayor, City of Alameda

**From:** Robert Lane [mailto:r\_k\_lane@pacbell.net]

**Sent:** Monday, April 03, 2017 2:06 PM

**To:** Trish Spencer <TSpencer@alamedaca.gov>

**Subject:** Fw: CUP definition at 1200 Park Street

Mayor Spencer: This office represents the owners of 1200 Park Street with regard to their sale of the property to Big O Corporation, the former franchisor of the tenant at that site. The Conditional Use Permit for that location is the subject of inquiry by the City through the offices of Mr. Thomas of the Planning Staff, and it is important to be able to address certain issues before the hearing later this month. With that in mind I have numerous times attempted to get certain words of the CUP conditions defined by the City Attorney to no avail. As you can see from the below, I have now addressed this inquiry to Ms. Kern since I have received no cooperation at the lower level since my first inquiry on February 22nd. Perhaps your good offices could assist in this matter.

Thank you for any assistance that you may give. Robert Lane, Attorney for Owners of 1200 Park Street

----- Forwarded Message -----

**From:** Robert Lane <r\_k\_lane@pacbell.net>

**To:** "jkern@alamedacityattorney.org" <jkern@alamedacityattorney.org>

**Cc:** Farimah Brown <fbrown@alamedacityattorney.org>

**Sent:** Monday, April 3, 2017 1:53 PM

**Subject:** Fw: CUP definition

Dear Ms. Kern: As you can see from the email string below, this office has been trying to get an answer from Ms. Brown on the subject of the Conditional Use Permit language since FEBRUARY 22ND, without success.

The one time that I was able to break through the screening, she had not looked at the questions but promised an answer with Mr. Thomas on the following Tuesday.... that never happened and my attempts to follow up were met with silence. Could you please address the issues from your office. We have an all important hearing later this month. I very much appreciate your efforts.

Robert Lane, Attorney for Owners of 1200 Park Street.

----- Forwarded Message -----

**From:** Farimah Brown <fbrown@alamedacityattorney.org>

**To:** Robert Lane <r\_k\_lane@pacbell.net>



**Sent:** Tuesday, March 7, 2017 6:44 PM  
**Subject:** RE: CUP definition

Robert,

Can we talk on Thursday. I'm tied up with a council meeting tonight and a mediation tomorrow. Let me know.

Farimah F. Brown  
Senior Assistant City Attorney  
City of Alameda  
2263 Santa Clara Avenue, Room #280  
Alameda, CA 94501  
(510) 747-4788  
[fbrown@alamedacityattorney.org](mailto:fbrown@alamedacityattorney.org)

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**From:** Robert Lane [[mailto:r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)]  
**Sent:** Monday, March 06, 2017 4:28 PM  
**To:** Farimah Brown <[fbrown@alamedacityattorney.org](mailto:fbrown@alamedacityattorney.org)>  
**Subject:** Re: CUP definition

Farimah: As you know from the below request, I have been trying to reach you for response by phone and email without success, the last phone call to you being just 10 minutes ago. As this is an important issue before the City this month, it would be helpful to have an answer that we can rely on. Thank you in advance. Robert Lane

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**From:** Farimah Brown <[fbrown@alamedacityattorney.org](mailto:fbrown@alamedacityattorney.org)>  
**To:** Robert Lane <[r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)>  
**Sent:** Wednesday, February 22, 2017 9:53 AM  
**Subject:** Re: CUP definition

Hi Robert, I'm out of the office. Can we talk on Monday?

Sent from my iPhone

On Feb 21, 2017, at 10:34 PM, Robert Lane <[r\\_k\\_lane@pacbell.net](mailto:r_k_lane@pacbell.net)> wrote:

Farimah: I am reaching out to you since you seem to be the one that oversees the Planning Board matters. I am Robert Lane, attorney for the Owner/Sellers at 1200 Park St. As you know the CUP for that location is a topic of discussion and in that regard it would be helpful if the Owner understood what "business vehicles" means, which wording is found in Condition 3 of the UP-88-36 Conditional Use Permit. Also the word "stored" in that same condition seems to mean "after business hours"... can we rely on that interpretation? Please give us some comfort in understanding what these words mean to the City and in what context. Thank you, Robert Lane, attorney for Owner/Seller