

City and County of San Francisco



London Breed
Mayor

Board of Appeals

Julie C. Rosenberg
Executive Director

June 12, 2023

Mayor London Breed
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102
MayorLondonBreed@sfgov.org

Supervisor Hillary Ronen
Board of Supervisors, District 9
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Hillary.Ronen@sfgov.org

President Aaron Peskin
Board of Supervisors, District 3
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Aaron.Peskin@sfgov.org

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Department of Building Inspection
49 South Van Ness Avenue
San Francisco, CA 94103
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Philip Ginsburg, Director
Recreation and Parks Department
501 Stanyan Street
San Francisco, CA 94117
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Andrico Penick, Director
General Services Agency, Real Estate Division
25 Van Ness Avenue, Suite 400
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Joaquín Torres, Assessor-Recorder
1 Dr. Carlton B. Goodlett Place, Room 190
San Francisco, CA 94102
Joaquin.Torres@sfgov.org

Dear Mayor Breed, Supervisor Ronen, Supervisor Peskin, Director O'Riordan, Director Ginsburg, Director Penick, and Assessor-Recorder Torres:

I write to you today on behalf of the Board of Appeals ("BOA"). On April 26, 2023, at our regularly scheduled meeting, we heard Appeal No. 23-008, an appeal by Friends of the Mission

Greenway of a simple building permit issued to 17th and Peralta LLC for the property located at 957 Treat Avenue in the Mission District. The property, popularly known as “Parcel 36,” is an irregularly shaped former railroad right-of-way for which the ownership records are incomplete and include a corporation that dissolved in the 1930s. Parcel 36, a private lot, has been used for parking and loading by adjacent parcel owners.

The appeal itself only addressed a permit application with the Department of Building Inspection to replace in-kind a gate providing access to Parcel 36 from 22nd Street near the corner of Harrison Street. Monkeybrains, an internet service provider and an affiliate of 17th and Peralta LLC, uses the parcel for parking and loading. Friends of the Mission Greenway, an organization that supports public gardens, appealed the permit because they did not want to be excluded from the parcel. Although Friends of the Mission Greenway does not have any ownership interest in the parcel, the organization has sought to create a community garden on Parcel 36. The BOA granted the appeal unanimously, with the full support of both the Planning Department and the Department of Building Inspection (“DBI”), because 17th and Peralta LLC, the permit holder, is not the owner of record for 957 Treat Avenue and does not hold a recorded easement. 17th and Peralta LLC had sought to replace the damaged gate providing access to Parcel 36 based on security concerns, but the Planning Department and DBI concluded that the permit had been issued in error because only the owner of the property or the holder of a recorded easement on the property could obtain such a permit.

This appeal was narrow in scope and the BOA only had the authority to rule on the issuance of the permit in question. However, the April 26 hearing, which featured approximately 50 comments from members of the public and lasted approximately three hours, surfaced several significant problems within City government that the Board of Appeals agreed should be brought to your attention.

First, the conflict between Monkeybrains and the appellant, Friends of the Mission Greenway, revealed potential shortcomings in the City government’s response to longstanding issues with Parcel 36. Both parties to this appeal acknowledged engaging with Supervisor Hillary Ronen’s office regarding both the proposed private usage by Monkeybrains and proposed public usage by the Friends of the Mission Greenway. Parcel 36, with an unknown or unconfirmed owner-of-record, presents security concerns and unique legal problems and opportunities, giving rise to an increased risk of litigation.

We respectfully request that Supervisor Ronen’s office or the Mayor’s office, or both, intervene and mediate now, as the BOA’s decision has not resolved the conflict between the public and the adjacent property owners concerning the status of Parcel 36. It was brought to the BOA’s attention, after the April 26, 2023 hearing, that Monkeybrains installed a large, heavy lock on the gate that was the subject of the appeal, which implies an escalation of hostility. Mediation and community building is clearly the superior option here.

Second, several other City departments can and should be involved in the resolution of the ambiguous status of Parcel 36, each of which are copied on this letter. Members of the BOA, members of the public, and the parties to this appeal each expressed disappointment with the

unresponsiveness of several City departments regarding this property. Those departments include: the Recreation and Parks Department, which should be involved as a potential steward of Parcel 36, a space that has been used as informal park space by many Mission District residents; the Department of Real Estate, which could potentially exercise eminent domain over or otherwise obtain Parcel 36; and the Assessor-Recorder's Office, which has apparently conducted research on the ownership of Parcel 36 and recently assessed property taxes on the parcel after many years of not doing so. The BOA asks that these departments, in conjunction with Supervisor Ronen and Mayor Breed, work with the stakeholders to resolve this matter.

The BOA wants to see the best possible resolution of this unusual situation with the cooperation and collaboration of our City government. While we do not have the power to do anything beyond what we have already done, we sincerely urge the recipients of this letter to work with the Friends of the Mission Greenway, Monkeybrains, and other stakeholders to resolve this matter.

Sincerely,



Alex Lemberg
Commissioner, Board of Appeals
On Behalf of the Board of Appeals

cc:

Friends of the Mission Greenway themissiongreenway@gmail.com

Monkeybrains amen@monkeybrains.net

City and County of San Francisco



London Breed
Mayor

Board of Appeals

Julie Rosenberg
Executive Director

DRAFT

June 7, 2023

Mayor London Breed
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102

Supervisor Hillary Ronen
Board of Supervisors, District 9
1 Dr. Carlton B. Goodlett Place, Room 244
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1 Dr. Carlton B. Goodlett Place, Room 190
San Francisco, CA 94102

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The appeal itself only addressed a permit application with the Department of Building Inspection to replace in-kind a gate providing access to Parcel 36 from 22nd Street near the corner of Harrison Street. Monkeybrains, an internet service provider and an affiliate of 17th and Peralta LLC, uses the parcel for parking and loading. Friends of the Mission Greenway, an organization that supports public gardens, appealed the permit because they did not want to be excluded from the parcel. Although Friends of the Mission Greenway does not have any ownership interest in the parcel, the organization has sought to create a community garden on Parcel 36. The BOA granted the appeal unanimously, with the full support of both the Planning Department and the Department of Building Inspection ("DBI"), because 17th and Peralta LLC, the permit holder, is not the owner of record for 957 Treat Avenue and does not hold a recorded easement. 17th and Peralta LLC had sought to replace the damaged gate providing access to Parcel 36 based on security concerns, but the Planning Department and DBI concluded that the permit had been issued in error because only the owner of the property or the holder of a recorded easement on the property could obtain such a permit.

This appeal was narrow in scope and the BOA only had the authority to rule on the issuance of the permit in question. However, the April 26 hearing, which featured approximately 50 comments from members of the public and lasted approximately three hours, surfaced several significant problems within City government that the Board of Appeals agreed should be brought to your attention.

First, the conflict between Monkeybrains and the appellant, Friends of the Mission Greenway, revealed potential shortcomings in the district supervisor's response to longstanding issues with Parcel 36. Both parties to this appeal acknowledged engaging with Supervisor Hillary Ronen's office regarding both the proposed private usage by Monkeybrains and proposed public usage by the Friends of the Mission Greenway. Parcel 36, with no owner-of-record, presents security concerns and unique legal problems and opportunities, giving rise to an increased risk of litigation. Several members of the public expressed that they felt that Supervisor Ronen's office had been too "hands-off" with this situation. The BOA did not have the opportunity to hear from Supervisor's Ronen's Office regarding this matter, so the commissioners do not have a complete record of what transpired.

It was clear to the BOA that both parties to this appeal have legitimate concerns that may be appropriate for civil court, but also that litigation is not the best option available. Instead, we believe that Supervisor Ronen's office, the Mayor's office, or both should have intervened and mediated the dispute between the neighborhood group and the adjacent property owners. *We respectfully request that these offices intervene now, as the BOA's decision has not resolved the conflict between the public and the adjacent property owners concerning the status of Parcel 36.* It was brought to the BOA's attention, after the April 26, 2023 hearing, that Monkeybrains installed a large, heavy lock on the gate that was the subject of the appeal, which implies an escalation of hostility. Mediation and community building is clearly the superior option here.

Second, several other City departments can and should be involved in the resolution of the ambiguous status of Parcel 36, each of which are copied on this letter. Members of the BOA, members of the public, and the parties to this appeal each expressed disappointment with the unresponsiveness of several City departments regarding this property. Those

departments include: the Recreation and Park Department, which should be involved as a potential steward of Parcel 36, a space that has been used as informal park space by many Mission District residents; the Department of Real Estate, which could potentially exercise eminent domain over or otherwise obtain Parcel 36; and the Assessor-Recorder's Office, which has apparently conducted research on the ownership of Parcel 36 and recently assessed property taxes on the parcel after many years of not doing so. The BOA asks that these departments, in conjunction with Supervisor Ronen and Mayor Breed, work with the stakeholders to resolve this matter.

The BOA wants to see the best possible resolution of this unusual situation with the cooperation and collaboration of our City government. While we do not have the power to do anything beyond what we have already done, we sincerely urge the recipients of this letter to work with Friends of the Mission Greenway, Monkeybrains, and other stakeholders to resolve this matter.

Sincerely,



Alex Lemberg
Commissioner, Board of Appeals
On Behalf of the Board of Appeals

cc: Friends of the Mission Greenway; Monkeybrains

Member, Board of
Supervisors
District 9



City and County of San
Francisco

HILLARY RONEN

June 5, 2023

San Francisco Board of Appeals
49 South Van Ness
Suite 1475 (14th Floor)
San Francisco, CA 94103

Re: Parcel 36

Dear Board of Appeals:

I write to explain the legal circumstances regarding Parcel 36 in the Mission District. Additionally, I would like to address several inaccuracies in your characterization and presumptions regarding my work related to this property.

I first began work on this project over ten years ago while I was a Legislative Aide for Supervisor David Campos. Tree Rubinstein, who runs the free food stand at Parque Niños Unidos, approached the District 9 Office about farming the land on Parcel 36 to increase the amount of produce he was able to gift to the community each week. Both Supervisor Campos and I loved the idea and spoke with several City Departments about making the idea a reality. We immediately ran into difficulties since the City does not own the land and we could not locate the entities who hold title to the land.

Several years later Tree reinitiated his request to partner to gain access to the land. Despite the difficulties we encountered in the past, I assigned my Chief of Staff at the time, Amy Beinart, to research how we could move the project forward despite the ownership issues standing in our way. Unfortunately, after months of consultation with the City Attorney, Assessor-Recorder, and the Real Estate Division, we were unable to move the project forward because those Departments failed to locate a landowner.

During this time, however, the City did determine the identity of the assesses for Parcel 36. In this case, we were advised that the assesses fell into a category called "non-owner assesses" and the City Attorney advised us that unless the assesses identified had been specifically given land rights they do not have the right to sell or grant the land, and are solely responsible for paying the property tax. As of today, those property tax payments are up to date, which forecloses any possibility that the City can auction the land for non-payment.

Recently, since the moment the news broke that Mission Greenway activists cut the fence and began planting on the parcel without permission of the landowners, my office began researching legal options for control of the land for the third time. My staff has spent dozens of hours working on trying to help all parties involved gain clarity and agreement over the land.

The City Attorney has advised that property claims on this site must ultimately be settled by a court of law with jurisdiction, and as Supervisor, I do not have the authority to determine ownership issues or settle disputes between the property owners adjacent to the land and the Mission Greenway activists. I have nonetheless offered to mediate the dispute in the past but no longer believe I would be successful given the level of hostility between the parties.

Both the Mission Greenway activists and members of the Board of Appeals have suggested that I begin the eminent domain process for Parcel 36. Unfortunately, eminent domain is not possible at this site for many reasons. First, eminent domain requires the City to make a good faith purchase offer to the owner of land, before the legal proceeding can commence. I have asked the City Attorney and City Assessor to identify the owners of the land but was informed that the information is confidential and cannot be shared with a City Supervisor. Furthermore, I have been told by an outside party that over a dozen trusts own portions of the land and some of those trusts no longer exist. So even if I could make an offer to purchase the land, I wouldn't know who to make that offer to.

Second, even if we could locate the legal owners of the property, a good faith offer requires a good faith source of cash behind that offer. The City is currently running upwards of a \$700 million deficit and buying a parcel worth somewhere in the neighborhood of \$25-\$50 million is not a current possibility. The Mayor has just cut millions from life saving services for the poorest residents of San Francisco from the City Budget and the Board will be prioritizing those needs during the Budget process that commences next week.

Lastly, because the Board of Supervisors does not buy, sell or operate land, a department with that ability must step forward. At present neither the Recreation and Parks Department (RPD), Real Estate Division, nor Public Works have expressed interest in or capacity to buy the land. RPD has a long list of potential acquisitions, based on equity and neighborhoods that do not have park assets. This parcel sits directly across from an existing city park and community garden, Parque Niños Unidos.

Finally, a critical factor in determining land acquisition priorities for the City includes whether there is broad community support for the acquisition. In this case, the controversy over this parcel has led to several instances of violence, property destruction, and intimidation of valued establishments in the area, including a preschool that serves the Mission's low-income children. This parcel of land has become toxic with as many community members against the Mission Greenway activists as for them.

I very much support open and public green spaces in District 9, and have worked with several broad-based community groups to establish community gardens and public open space on numerous parcels throughout District 9. The expansion of open space is one of my office's commitments to our District, and I have delivered on that commitment time and time again.

Because I support community efforts to organize green spaces, I have offered the Mission Greenway activists to partner to locate a City owned parcel in the Mission to turn into a public garden that is not tangled in such a complex legal morass. Several of the activists agreed to work together on this endeavor and I hope this effort will lead to more peace in the Mission.

I would also ask that in the future, before you make assumptions about my work or lack of work, that you reach out to me to discover the facts before casting aspersions about me or my office. I also ask you to look internally and ask yourself would you have made similar negative assumptions about me if I were a male Supervisor. I am available to discuss any of the above at any time. Director Rosenberg has my cell phone and is welcome to share it with any Commissioner who wishes to contact me.

Sincerely,

A handwritten signature in blue ink, reading "Hillary Ronen". The signature is fluid and cursive, with the first name "Hillary" and last name "Ronen" clearly distinguishable.

Hillary Ronen
Supervisor, District 9

PUBLIC COMMENT

From: [Rudy Rucker](#)
To: [Rosenberg, Julie \(BOA\)](#)
Cc: [Longaway, Alec \(BOA\)](#); [Alex Menendez](#); [BoardofAppeals \(PAB\)](#); [Lerma, Santiago \(BOS\)](#); [Ronen, Hillary](#)
Subject: Re: Special Item on BOA Calendar for June 7, 2023 (draft letter to Supervisor Ronen et al. re Parcel 36)
Date: Saturday, June 3, 2023 12:06:13 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Director Rosenberg and Commissioner Lemberg,

Thank you for sending us a notice regarding the proposed letter and a copy of the draft letter. Please accept this email as our public comment.

The landscape has changed since the hearing and I do not support the letter. The Draft BOA letter contains a factual error about the lock; moreover, there is an active restraining order against four members of the Mission Greenway for assault, threats of arson, threats of physical harm, and vandalism. You can read about that on the Chronicle:

<https://www.sfchronicle.com/sf/article/monkeybrains-mission-dispute-18121282.php>

Here are 7 additional points to consider:

1. **Gate Lock** installed before BOA Hearing
The letter states: "It was brought to the BOA's attention, after the April 26, 2023 hearing, that Monkeybrains installed a large, heavy lock on the gate that was the subject of the appeal, which implies an escalation of hostility."
In fact, the lock had been on since before the hearing. The Friends of the Mission Greenway mentioned the lock in the hearing. If you like, you may review the transcript from the past hearing.
2. **Work without permit** by The Friends of Mission Greenway
The Friends of the MG (the agitators) did work on the other end of the lot on the gate not part of the appeal. They modified the gate to add a lock in May, 2023. We attempted to modify the gate through proper channels, got a permit, was appealed, and then did not do the work. This other group does not care about permits.



3. **Assault** by The Friends of the Misison Greenway on May 24, 2023
 Four members of the Mission Greenway surrounded, antagonized me, threatened me, and assaulted me. I have filed for a restraining order and have received it. Elizabeth Creely, Jay Martin, Lara Hanna, and Mauricio Zambrano. The court date is tentatively set for June 20, 2023. I assume they will be at the June 7th hearing. If I showed up, will the BOA have a sheriff there to remove them for violation of the restraining order, or will they be permitted at the hearing? Please let me know.
 Police case 230362096
 Temporary Restraining Order Case CCH-23-585730
4. **Vandalism** by The Friends of the Misison Greenway on May 25, 2023
 Police case 230362068
5. **No remorse** by Elizabeth Creely on May 25, 2023
 Elizabeth reported to a Mission Local journalist that she had the right to assault me after she failed to provoke me into fighting them. ***"I hit him in the face, and that was absolutely my right to do," said Creely.*** - Mission Local
6. **Nuisance to our Business** by The Friends of the Mission Greenway
 Two days ***after*** the hearing, the agitators dumped four 5 cubic yard piles of mulch (20 cubic yards total) in the lot. One abutting our building. These piles interfered with our

use. They repeatedly -- before and after the hearing -- place objects in the lot to interfere with access to our loading dock. We have multiple active permits on the building and are doing construction.

7. **Theft of Water** ongoing by The Friends of the Mission Greenway

Rec and Park is aware that water is being stolen from the park and used by the agitators to water the plants. The water is billed to the city and paid for by tax payers like you and me.

We are improving the building and are an asset to the community. The agitators file false complaints with DBI and obstruct us. They are violent. They threaten us.

My company is working with attorneys and the permitting department to use our property. I, frankly, do not see the BOAs request that Supervisor Ronen's office intervene helpful. We are going through proper channels and this will take time. If anything, the BOA should respect California law and treat our prescriptive easement the same as a recorded easement. I feel this issue can be solved by the Mayor's department and her departments -- DBI and BOA. A Supervisor does not wield this power.

We attempted mediation, and The Friends of the Mission Greenway want zero cars and would not compromise on that issue while we were willing to compromise on access and having a garden maintained by them. As they say, "that ship has sailed."

I humbly ask the BOA to table the letter to Supervisor Ronen and instead use their powers to grant Monkeybrains an emergency permit to repair the fence the Greenway felt emboldened to damage by the ruling of the BOA.

Thanks,

Rudy Rucker

NB: due to the active restraining order against the Friends of the Mission Greenway, I will not be CC'ing them and request that you do not include me on any emails to them.

Executive Director Rosenberg and Commissioners of the Board of Appeals,

Thank you for your previous email confirming that I can submit an email response that would be added to the public record before the Weds hearing.

Although we appreciate the BOA trying to elevate this issue within the city, the proposed letter written by Alex Lemberg on behalf of the Board of Appeals is not only inaccurate but appears dated and very incomplete considering the events that have transpired since the April 26th hearing.

Letter is Inaccurate

The proposed letter says: *"It was brought to the BOA's attention, after the April 26, 2023 hearing, that Monkeybrains installed a large, heavy lock on the gate that was the subject of the appeal, which implies an escalation of hostility."*

This statement is absolutely not true. During the April 26th hearing **Elizabeth Creely** - board member of the Mission Greenway group - mentions the "heavy lock" that we were using to secure the gate long before even that hearing transpired. Please review online video of the April 26th hearing and check time position **35:30** where Creely provides testimony about the "heavy lock" after a question about access posed by Vice President Jose Lopez. Since nothing new occurred on the gate since the meeting there was clearly no escalation by Monkeybrains and BOA "learned" of nothing since the original hearing. Moreover, I would say commissioner Lemberg's word choice using the word "hostility" is depressingly biased and quite a misrepresentation when taking into account more recent events.

Online Video Link (position **35:30**):

https://sanfrancisco.granicus.com/player/clip/43531?view_id=6&redirect=true&h=a52cd49aeb29ee68fb7ce43dcbff1563

Letter is Incomplete

The situation involving Parcel 36 is quite fluid and is constantly evolving or devolving as the case may be. The proposed letter seems highly dated in addition to being inaccurate and does not at all capture the current climate. Moreover, the previous decision by the BOA simply emboldened the agitating group and has added additional challenges rather than resolved any. We feel this incomplete, inaccurate letter will only do more of the same.

Below is a timeline and my general comments associated with each.

-April 28th, 2023 - 2 days after our BOA hearing the guerilla gardeners dump 20 yards of dirt in four piles to the north of the lot where they have little to no presence as compared to the south of the lot. One of the 4 piles was directly behind our building. Rudy and myself were onsite after the dump and respectfully asked the group to move the pile behind our building to which they agreed and moved at a later date. To date, the now 3 massive piles are still there and have not been touched since they were dumped over a month ago. This, as we suspected, was just an escalation to squat more space now with large mounds of dirt.

-May 14th, 2023 - The guerilla gardening group continues to antagonize Monkeybrains by placing several tree stumps in the way of our path on lot 36. We respond by simply moving the stumps aside.

-May 20th, 2023 - The agitators do work without a permit on an 8 foot fence/gate on the South end of the parcel and create a very poorly constructed pedestrian door. I confirmed with building department on May 22, 2023 that this type of work requires a permit. The utterly bizarre irony of a group that appealed an alterations permit by us for a gate that would have complied with building codes building an unpermitted gate that complies with no building codes is surreal. What message is the BOA sending here? That if you try to use a lawful channel you will be stopped at your expense but going rogue is OK and even supported by the BOA? Please see below. This construction did not even last a week before coming apart as can also be seen below.



May 24th 2023 - Monkeybrains decides to build a small footing to secure 3 planters with an intent of delineating our space given that the agitators continue to try to encroach on the back of our building. We confirm with DBI on the same day that no permit is required for a footing under 30" above grade:
<https://sf.gov/information/check-if-your-construction-project-needs-permit>
Rudy Rucker returns at night to check on the work and is harassed and eventually assaulted by 4 guerilla gardeners (**Lara Hanna, Elizabeth Creely, Jay Martin** and **Mauricio Zambrano**) who were vandalizing our work when he arrived by himself. I came shortly after and witnessed the aftermath which was - in my opinion - a flurry of screaming and anger from the agitating group. Police eventually arrive and instruct all the parties to go home. Please review video here:
<https://www.sfchronicle.com/sf/article/monkeybrains-mission-dispute-18121282.php>



-May 25th, 2023 - Not even 22 hours after the horrible incident of the day before, two guerilla gardeners one of which was **Lara Hanna** who was also

present the day before arrive in the dead of night masked and with sledgehammers and power tools in backpacks. They begin to vandalize our small footing that was poured that day and disrupt the neighborhood making very loud sounds after 8pm. Rudy and I are alerted of the disruption and immediately call the police who come and detain the two vandals. The police ask us if we want to have them arrested for felony vandalism and we decline and decide to just file two police reports for the assault of the previous day and the vandalism of that day.



-May 27th-28th 2023 - Monkeybrains opens up the lot for Carnival staff and allows them to use the area behind our warehouse for artist staging and for loading and unloading of stage equipment.

-May 30th 2023 - A work place TRO is granted by a judge for four members of the Mission Greenway Group: **Lara Hanna, Elizabeth Creely, Jay Martin** and **Mauricio Zambrano** with a trial date set in late June.

Letter Should be Rewritten or Canceled

I respectfully ask the BOA to please consider the inaccuracies associated with the proposed letter and the large amount of detail that is missed as the letter exists today. It is my strong opinion that this letter not be sent in its current form and be rewritten to be factual and to capture the complete picture of events that have occurred since our initial hearing on April 26, 2023. Moreover, I would add that the D9 office has been very responsive, especially in the last month, meeting with both sides and providing suggestions and alternatives in an effort to stabilize the situation.

I believe the BOA's intent is a good one in that they want to precipitate a resolution for this very complex civil matter now with significant media attention. However, enabling chaos is more likely, given what occurred after the agitating group perceived the previous decision by the BOA as huge win despite its actual limited focus. This notion, effectively seeded by the BOA, has been taken grossly out of proportion and has resulted in work without a permit, felony vandalism, assault and significant reputational harm to people on both sides. Please help us navigate this very sensitive issue by supporting lawful work, neighborhood safety and co-existence.

Sincerely,
Alejandro Menendez
Co-Founder Monkeybrains.net