

Regular Council Meeting

May 2, 2024

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FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

9:20 A.M. (ID 24-424) - Consideration of an appeal related to Zoning Inquiry No. P23-02357 for Bauer's Towing located on approximately 0.71 acres between West Voorman and West Nielsen Avenues, west of North Thorne Avenue in Fresno, California (Council District 3) - Planning and Development Department.

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: Correspondence from Bradley Boulden (Rec'd 5/1/2024)

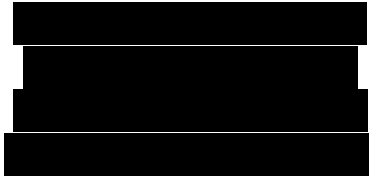
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BRADLEY K. BOULDEN
Attorney at Law



Writer's E-Mail: [b](#) 
File No. 9800.02

May 1, 2024

Via Email To Phillip Siegrist (5/1/24)
Planning Department
For Distribution to Fresno City Councilmembers
2600 Fresno Street, 2nd Floor
Fresno, CA 93721

Re: *Bauer's Auto Wrecking And Towing's Appeal Of Zoning Inquiry*
Application P23-02357 To The Fresno City Council.

Dear City Councilmembers:

This correspondence relates to Bauer's appeal to the Fresno City Council by Councilmember Arias from the denial of the Fresno Planning Commission to find that Bauer's complied with Policy and Procedure C-002 in a hearing on March 6, 2024.

As in underlying appeals, Bauer's respectfully requests that the Fresno City Council modify the Confirmations issued by the City Planning Department provided in response to Zoning Inquiry No. P23-02357 (the "Confirmation"), to revise the last sentence of Paragraph 7 to provide as follows: ***"Based on the record of proceedings in this matter, the Planning Commission confirms that the Site is in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011."***

The reason that C-002 approval is so important, despite what the Planning Department has alleged in its Report (that the Council cannot decide this matter because C-002 has ironically now been superseded), is that its decision caused the Fresno Police Department to preclude Bauer's from towing vehicles for the Police Department under its rotational tow list since last March 2023—despite the fact that Bauer's was ordered to be reinstated to the FPD's rotational tow list agreement by the City of Fresno' Independent Hearing Officer in 2023. We simply cannot allow Fresno City branches to shirk their responsibilities, fail to do their jobs, and simply take each other's word for things to decide matters against the citizens it governs.

I. EVENTS AT UNDERLYING PLANNING COMMISSION APPEAL

A. First Planning Commission Appeal, February 7, 2024

At the end of Planning Commission Appeal of this matter on February 7, 2024, the Planning Commissioner moved to continue the appeal to a future date, as he believed the Fresno Planning Commission was not comfortable to make a decision as to whether or not Bauer's subject storage lot was paved. The motion carried and this appeal was continued with the Planning Commission to March 6, 2024. <https://www.youtube.com/watch?v=Gc7QIdm94ns> (Youtube.com search: "***Fresno Planning Commission meeting February 7, 2024***"; minutes:seconds 58:32—101:22 therein.)

Just prior to continuing this appeal to March 7, Commissioner Vang then encouraged Bauer's to work with the City Staff to prove that Bauer's subject storage lot was paved. Phillip Siegrist, the City Planning Manager and presenter for the Planning Department at both appeals, finally came to inspect Bauer's subject storage yard on February 28, 2024. This was the first time—despite Bauer's having applied for a zoning inquiry in July 2023—that anyone from the Planning Department set foot in Bauer's storage yard to ". . . conduct[] research of the subject property" (see near top of page 3 of its Report To The City Council "Report"), as the Planning Department claimed it did in its Report prior to preparing its zoning inquiry response letter.

Additionally, before the March 7 continued Planning Commission appeal hearing, Bauer's incurred further expenses with its attorney and hired a California state licensed contractor to take drone videos, supply additional photographs of the subject storage yard. Bauer's relied on the Planning Commission's word that the appeal would be continued to allow the parties to work together to prove whether Bauer's storage yard was paved. The contractor Bauer's hired in anticipation of the March 7 appeal hearing, after having already been paid for his services, agreed to set forth a declaration testifying that the subject storage lot of this appeal had over 7,000 square feet of paving. He was not compensated for this task. The Declaration of Steven Severance is supplied in Exhibit Q of the Agenda for this appeal.

B. Second (Continued) Planning Commission Appeal, March 6, 2024

At the March 7, 2024 continued appeal hearing, Mr. Siegrist was able to again present to the Planning Commission (see <https://www.youtube.com/watch?v=tGTZqJyEjYI> (Youtube.com search "***Fresno Planning Commission meeting March 6, 2024***", minutes:seconds therein 14:20 to 21:02). Despite all Bauer's work in reliance on a continued hearing and the fact that Mr. Siegrist walked the subject storage yard, saw the paving, and was provided the Declaration of Steven Severance supporting over 7,000 square feet of paving existing on the subject storage yard by a licensed contractor, the Planning Department failed to mention all of this in its presentation.

The Commissioner then, in a strange turn of events—as if he had prior conversations with the Planning Department on this matter—reversed course. The Commissioner, after ironically letting the Planning Department present, then claimed that public comment was closed at the February 7 appeal. The Commissioner then asked a question and looked directly at Planning Director, Ms. Jennifer Clark, for an answer, but he denied any presentation of new material from Bauer's. The Commissioner, despite telling the parties to work together and provide more information, said no new information could be presented. Bauer's was told it could file a new

Zoning Inquiry Application with the City and present new information. This was the equivalent of a sucker punch and gut punch to Bauer's after it waited another month and expended additional great sums of money to provide the Commission what it asked Bauer's to do. The Commission decided 3-2 against Bauer's after being hogtied and agreeing not to look at the evidence before it.

Such a holding flies in the face of fairness and justice in this matter, and continues to allow the FPD, the Planning Department, and the Planning Commission to side skirt their responsibilities to do their jobs and serve the community with fairness and without bias against its citizens. If all public comment was closed, why continue the hearing and ask the parties to work together? Moreover, the Commission, in **Exhibit S** of the Agenda, provided on page 2 at the last WHEREAS, the following:

“WHEREAS, on March 6, 2024, the Planning Commission conducted a subsequent public hearing to review the Planning and Development Department's zoning inquiry response and the applicant's appeal and considered the Planning and Development Department's report recommending denial of the appeal; and, . . .”

This flies in the face of equity and what the Commission claims it did versus how they proceeded in reality. The Commission again misrepresented itself and did not deal fairly with Bauer's at the March 6 appeal hearing, as there was no subsequent public hearing since Bauer's was not allowed to present (though the Planning Department was) and public comment was allegedly closed at the end of the prior appeal. We pray the Council will do what the Commission claims it did and decide this matter on the ample evidence that existed in 2011 to “verify” C-002 compliance existed and still does—if not by the evidence in 2011, then by the additional evidence supplied.

II. BAUER'S SUBJECT STORAGE YARD IS PAVED, THUS C-002 APPROVAL SHOULD BE GRANTED BY THE COUNCIL.

Even though the Planning Commissioner disturbingly provided that no new information could be provided since the appeal hearing closed on February 7, 2024, ample proof existed proving Bauer's passed C-002 in 2011 and was C-002 compliant at all times herein. In **Exhibit J** of the Agenda on this matter, pages 29-34 demonstrate **the required paving in Bauer's subject storage yard—paving that existed in 2011.** In fact, on July 7, 2011, these photos were submitted to and received by the Fresno Planning Department in Bauer's Q-11-035 Zoning Inquiry it paid \$510.00 for and submitted to the Planning Department. Bauer's was approved as a LEGAL NON-CONFORMING USE because it was grandfathered in; thus, it did not have to file a Conditional Use Permit (CUP) where other newer towing companies that were not in existence prior to 2006 would be required to do so. This is why Bauer's use in 2011 was found to be LEGAL. The non-conforming part solely related to the fact it was not required to file a CUP due to being grandfathered-in. It was found to be approved and “legal” by the Planning Department's Manager—the same manager that inspected every other towing company storage yard for C-002 compliance. Mr. Sanchez walked the property and stood on the pavement prior to approving it in response to the 2011 Zoning Inquiry Application submitted, unlike with Bauer's 2023 Zoning Inquiry Application, where no one inspected Bauer's yard prior to providing a response.

Mr. Sanchez approved Bauer's storage yard in 2011, and the Planning Department had such approval and supporting approval photographs in its file on Bauer's subject storage yard since July 2011. If the Planning Department performed its job and not simply relied on the unqualified FPD

statements as to Bauer's C-002 compliance and inspected Bauer's property itself, this all could have been avoided. In fact, *Fresno Municipal Code* Section 15-5019, entitled "Zoning Inquiry," provides as follow:

"Requests for formal interpretations of this Code, verifications relating to prior approvals or permits, or confirmation of the applicable zone district for a parcel may be made to the Director. Requests shall be in writing. The decision of the Director shall be made consistent with resolutions adopted by the Commission and Council. This decision may be appealed under [Section 15-5017](#), Appeals."

Though the City will claim it had no duty to inspect and could simply rely on the file, such a position is not only counter-intuitive, but it is not supported by this Code. Inherent in ". . . verifications relating to prior approvals or permits . . ." is a duty to inspect. And, an inspection took place in 2011 for Bauer's Zoning Inquiry Q-11-035. Moreover, the pictures in the file from 2011 prove the pavement, and the Planning Department had those since about 1 month before it approved Bauer's for C-002. Thus, the City's claim is disingenuous, and not supported in the Municipal Codes.

As such, Bauer's should never have been in this situation—forced to file an additional zoning inquiry application (P23-02357), the Planning Department Appeal, the Planning Commission Appeal or have Councilmember Arias file an appeal herein. And, the Planning Department refused to inspect Bauer's property despite being asked to do so and having proof in photographs of the paved storage yard in 2011. Bauer's unquestionably passed C-002 in 2011 or it would have never been able to sign the 2011, 2014, 2018 FPD Tow Service Agreements—all of which required C-002 approval.

Moreover, **Exhibit D** of the Agenda demonstrates the support that the FPD was made known of Bauer's C-002 approval by Mike Sanchez in 2011—before Bauer's signed the 2011 tow service agreement. The FPD was in close communications with City Manager Sanchez. Moreover, the letter from Planning Manager Mike Sanchez on August 5, 2011 said Bauer's use was LEGAL. The City's conclusion in 2011 should have been good enough in 2023 and now, especially given that Mike Sanchez signed a declaration in 2023 that he recalled approving Bauer's C-002 status in 2011—something the current Planning Manager said should have carried the day. In an email between Bauer's counsel and Mr. Siegrist, Bauer's counsel confirmed that Mr. Siegrist claimed it was just that the Planning Department was not sure Bauer's passed C-002 in 2011 given alleged confusing language in the C-002 Approval Letter Mr. Sanchez prepared on August 5, 2011. (See **Exhibit D** of the Agenda; please also see page 3 of **Exhibit P** (wrongfully indicated as Exhibit "O" on its first page therein) of the Agenda for discussion as to clarification of the statements made in the August 5, 2011 Approval Letter, as well as *PowerPoint®* slide #5 therein.)

Further, no branch of the City should have questioned this approval or attempted to deny it, because under C-002, this approval was not to be denied unless or until Bauer's did something to lose its status, like change its use, property or abandon it. But, **Exhibit E** of this appeal Agenda, which is the City's response to Bauer's Zoning Inquiry, confirms that Bauer's to this day has not done anything that would have led Bauer's to lose C-002 approval or its grandfathered-in status. The City Planning Department continues to confirm that Bauer's can continue its legal use. So, the Planning Department and Commission were wrong to deny Bauer's this C-002 approval in 2023.

III. CONCLUSION.

For the foregoing reasons, Bauer's respectfully requests that the City Council modify the Confirmations issued by the City Planning Department provided in response to Zoning Inquiry No. P23-02357 to revise the last sentence of Paragraph 7 to provide as follows:

“Based on the record of proceedings in this matter, the Planning Commission confirms that the Site is in conformance with the standards and requirements outlined under Policy and Procedure No. C-002 dated June 14, 2011.”

As a basis for this conclusion, Bauer's also invites Councilmembers to look at Agenda Exhibits P, which was Bauer's presentation at the February 7, 2024 Planning Commission Appeal. This clearly depicts what was conveyed about continuing the hearing and allowing for new evidence at the March 6, 2024, continued hearing.

Thank you for your time and consideration in this matter.

Sincerely,



Bradley K. Boulden