

**Exhibit O – Applicant Supplemental Letter  
dated 1/2/2024  
and Presentation**

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File No. 9800.02

January 2, 2024

*Via Email To Phillip Siegrist (1/2/24) &  
Hand Delivery To Planning Commission (1/3/24)*

Planning Commission  
2600 Fresno Street, 2<sup>nd</sup> Floor  
Fresno, CA 93721

**Re: Appeal Presentation To Planning Commission Appeal # P23-03471.**

Dear Planning Commission:

This *Appeal Presentation* relates to Bauer's Planning Commission Appeal hearing on January 3, 2024.

### PLANNING COMMISSION RELIEF REQUESTED

Bauer's respectfully requests that the Planning Commission 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."***

### BRIEF APPEALS HISTORY

- Bauer's towed for the Fresno Police Dept. (FPD) and was a participant on the FPD's Tow Service Agreement ("TSA") continuously over thirty-two (32) years since 1987 until it was wrongfully terminated in early 2021.
- Bauer's won two appeals in front of the City's Independent Hearing Officer, winning substantial attorney's fees and costs in both appeals.
- Bauer's was ordered to be reinstated by the FPD on the TSA in March 2023.
- The FPD refused to comply with Honorable Flores' order based on the FPD's determination that Bauer's did not comply with Policy and Procedure C-002 ("C-002"), and unsurprisingly, the Planning Department reviewed the FPD's intimations and followed in-line with the FPD and concluded that Bauer's does not comply with C-002.

- C-002 concerns standards that apply to tow yard vehicle storage lots, and its standards must be satisfied to be included on the 2011 TSAs and thereafter.
- This determination by the Planning Department is incorrect because Bauer's was confirmed to have satisfied those standards by an authorized City official in 2011, and therefore satisfies all conditions for reinstatement to the TSA, which the Planning Department and FPD wrongfully withhold.

**BAUER'S RESPECTFULLY REQUESTS THAT IT PREVAILS IN THIS APPEAL FOR THE FOLLOWING REASONS:**

**I. Bauer's Requests That The Planning Commission Modify The Zoning Inquiring Confirmation Because It Is Necessary And Relevant (Despite The Planning Department's Intimation In The Appeal Report That C-002 Is No Longer Relevant) To Continued And Ongoing Appeals In Front Of The Independent Hearing Officer And To Thwart The FPD's Stated Reason That Bauer's Cannot Tow For the FPD.**

A. In the highlighted portions of Exhibit A in Bauer's Summary Supplement Communication ("Supplemental Communication") on 12/28/23, the FPD finds that:

1. Bauer's cannot be allowed to complete FPD tows despite being ordered to be "reinstated" by the Fresno Independent Hearing Officer on March 30, 2023, due to the FPD and Planning Department finding that Bauer's failed C-002 (i.e., its tow storage yard is not "paved"). Thus, the Planning Commission's modification to show Bauer's is C-002 compliant is necessary given the FPD's stated reason for not allowing Bauer's to tow FPD TSA vehicles. Bauer's also believes it complies with the new standard set forth by the Planning Department in its Report, but that is for a later matter.
2. If the FPD and Planning Department acknowledged and followed Bauer's C-002 Approval Letter from Exhibit B in Bauer's Supplemental Communication, Bauer's would have been rightfully towing vehicles for the FPD. Thus, the Planning Department's argument in its Report that C-002 is no longer applicable misses the boat and fails to illustrate Bauer's need for the Planning Commission's modification on this Appeal.
3. Both the FPD and Planning Department continue to exhibit animus and unfair treatment of Bauer's by the FPD and Planning Department persistent failure to approve Bauer's per C-002 given the Approval Letter, the Declaration of Mike Sanchez (former City of Fresno Planning Manager), and the illustrations and facts set forth below.

**II. Exhibits B, C, D, E, F, and G To Bauer's Supplemental Communication Unequivocally Demonstrate That Bauer's Is C-002 Compliant.**

1. **Exhibit B, The Declaration of Former City Planning Manager, Mike Sanchez, And C-002 Approval Letter** Attached Thereto As “Attachment 1” Demonstrate That Bauer’s Complied With C-002.
  - a. **Paragraphs 3 and 4** of The Declaration of Mike Sanchez provide sworn testimony that Bauer’s was C-002 approved by the Planning Department.
  - b. The **C-002 Approval Letter** attached thereto as “**Attachment 1**” was signed by Mike Sanchez and was also cc’d and provided to FPD Captain Andy Hall.
  - c. See **Approval Letter**, highlights therein and on **Illustration A-1** thereto.
    - i. **Section 6.a.** of Approval Letter mentions maintaining a “paved” surface (same language as general command in **Exhibit C**, C-002 **Section 3.iii.**). **C-002 in Exhibit C** is also signed by Mike Sanchez.
    - ii. **2<sup>nd</sup> and 3<sup>rd</sup> Sentences of 6.a.** demonstrate Bauer’s or “Applicant’s” specific tasks in approval letter.
      1. **Maintain a paved surface pursuant to Exhibit A-1 thereto;**
      2. **Applicant shall also apply an \***“ADDITIONAL layer”** of base rock within 6 months, as necessary, from date of Approval Letter;**
        - a. **\*NOTE—**You don’t require a business to add an “additional” layer of base rock to an area within 6 months if you require them to “pave” the area.
      3. **Exhibit A-1** to the Approval Letter notes, in Mike Sanchez’s handwriting, that Applicant is to **Apply Condition 6.a.** (adding base rock) “**per 8/5/11 Approval Letter**”. This indicates that Mr. Sanchez did in fact Planning Department approve Bauer’s in the August 5, 2011 letter, as Mr. Sanchez called his letter an “Approval Letter.”
2. **Exhibit C, C-002, Also Indicates That Bauer’s Was C-002 Approved in 2011.**
  - a. **Exhibit C** is signed by Mike Sanchez, the Planning Department Manager who approved the towing companies (or not) per C-002 prior to the 2011 TSA.
    - i. **Page 2 therein, entitled, “Procedures” to Exhibit C** also sets forth that C-002 is not for new towing companies, but a process to verify the existing towing use of the tow yard existed prior to Directors No. 208, which

Bauer's was found to have satisfied by the Planning Department in this Approval Letter.

- ii. Thus, Bauer's C-002 approval should not have been disturbed since it was approved on August 5, 2011, and, this letter was the approval letter described in the C-002 "Procedures" section.

**3. Exhibit F (Declaration Of Ed Mason) To The Supplemental Communication Also Proves Bauer's is C-002 Compliant.**

- a. **Attachment 3 to Exhibit F** illustrates that the FPD was ordered to "reinstate" Bauer's on the TSA (provide Bauer's tows per the contract) by the Independent Hearing Officer within 14 days.
- b. **Attachments 1 and 2 taken together in Exhibit F** illustrate that Bauer's lot is "paved" in an area that is greater than 5,000 square feet and can facilitate a minimum of storing 20 vehicles to comply with C-002/Directors No. 208 and the FPD TSA.
  - i. The Planning Department relied on FPD biased intimations that were neither properly physically investigated by the FPD, nor Planning Department to conclude that Bauer's lot was not "paved" as required under C-002.
  - ii. The Planning Department failed to physically inspect Bauer's yard and instead relied on Google Earth images and/or photographs to conclude that Bauer's subject storage lot was not paved.
  - iii. **\*Attachment 1 vs Attachment 2** clearly evidences that in Attachment 1, Bauer's has a paved area, as shown and then highlighted in the 2<sup>nd</sup> and 3<sup>rd</sup> images provided therein.
  - iv. **Attachment 2**, which is taken from an earlier time (before November 5, 2023) and has the added "base rock" from 2011, does not clearly show the physical "paved" area due to the base rock covering some of the "paved" area.

**\*Thus, the FPD and Planning Department wrongfully concluded, without proper investigation, that Bauer's did not pass C-002.**

- c. **Attachment 5 to Exhibit F** illustrates that the 2011 TSA required Bauer's and every tow company to comply with C-002 or it would not be able to sign the 2011 TSA.

- i. Bauer's signed the 2011, 2014, and 2018 TSA's and extensions thereto until it was unfairly, and with animus, terminated from the 2018 TSA. (See also Attachment 4 to Exhibit F.)

**4. Exhibit D (Declaration Of Bradley K. Boulden And Exhibit G (Fax Transmission From The FPD To All FPD Towing Companies) also confirm Bauer's Was C-002 Approved By The Planning Department In 2011.**

- a. Exhibit G clearly shows that on June 11, 2011 (2 months prior to Bauer's receiving the 2011 Approval Letter), the FPD, through Captain Andrew Hall, spoke to Mike Sanchez. Mr. Sanchez relayed that no towing companies had complied with C-002/Directors No. 208 yet. Captain Hall wanted Tow Officer Dalan Richards to let all towing companies know that tow companies would not participate in the 2011 TSA if they were not compliant.
- b. **This is *de facto* proof that both the FPD and Planning Department knew that Bauer's passed C-002 in 2011, or Bauer's would not have been provided and signed the 2011 TSA.**
- c. \*Exhibit D and Attachment 1 thereto clearly demonstrate that the Planning Department knew that Mike Sanchez had the authority to C-002 approve Bauer's in 2011, but Phillip Siegrist, the current Planning Manager, claims that the FPD/Planning Department did not know if Bauer's was really approved in 2011 due to confusing language and not being able to ascertain whether or not Mike Sanchez C-002 approved Bauer's in 2011; thus, the Planning Department wrongfully alleged Bauer's was not C-002 approved in 2011.

\*This Attachment confirms this conversation and the fact that the Declaration of Mike Sanchez submitted in this Appeal should have resulted in Bauer's unequivocal passing C-002. The FPD and Planning Department continued its animus against and violation of Bauer's Constitutional Equal Protections "class of one" claims that C-002 was wrongfully and unfairly applied to Bauer's.

**5. Exhibit F (Declaration Of Ed Mason) To The Supplemental Communication Also Proves Bauer's Should Be Found To Be C-002 Compliant Due To Equal Protections "Class Of One" Violations Wherein C-002 Was Applied Unfairly Against Bauer's Compared To Other Similar FPD TSA Towing Operators.**

- a. Evidence of "class of one" constitutional equal protections violations are included in Exhibit F (Declaration of Edward Mason), Attachments 6 through 10 and through testimony provided by Mr. Ed Mason herein.

**CONCLUSION: PLANNING COMMISSION APPEAL REQUESTS FOR RELIEF**

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For the foregoing reasons, Bauer's respectfully requests that the Planning Commission 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.”**

Thank you for your time and consideration in this matter.

Sincerely,



Bradley K. Boulden

BKB:ivs

# *Appeal Presentation To Planning Commission*

## *Appeal # P23-03471*

Relating to Bauer's Planning Commission Appeal hearing on  
February 7, 2024.

### Why Here?

9/26/23 Planning Department Response to Zoning Inquiry **Wrongfully Found Bauer's Not C-002 Compliant** Because Department Mistakenly Concluded Bauer's **Storage Yard Is Not Paved—without ever physically visiting Bauer's subject storage.**

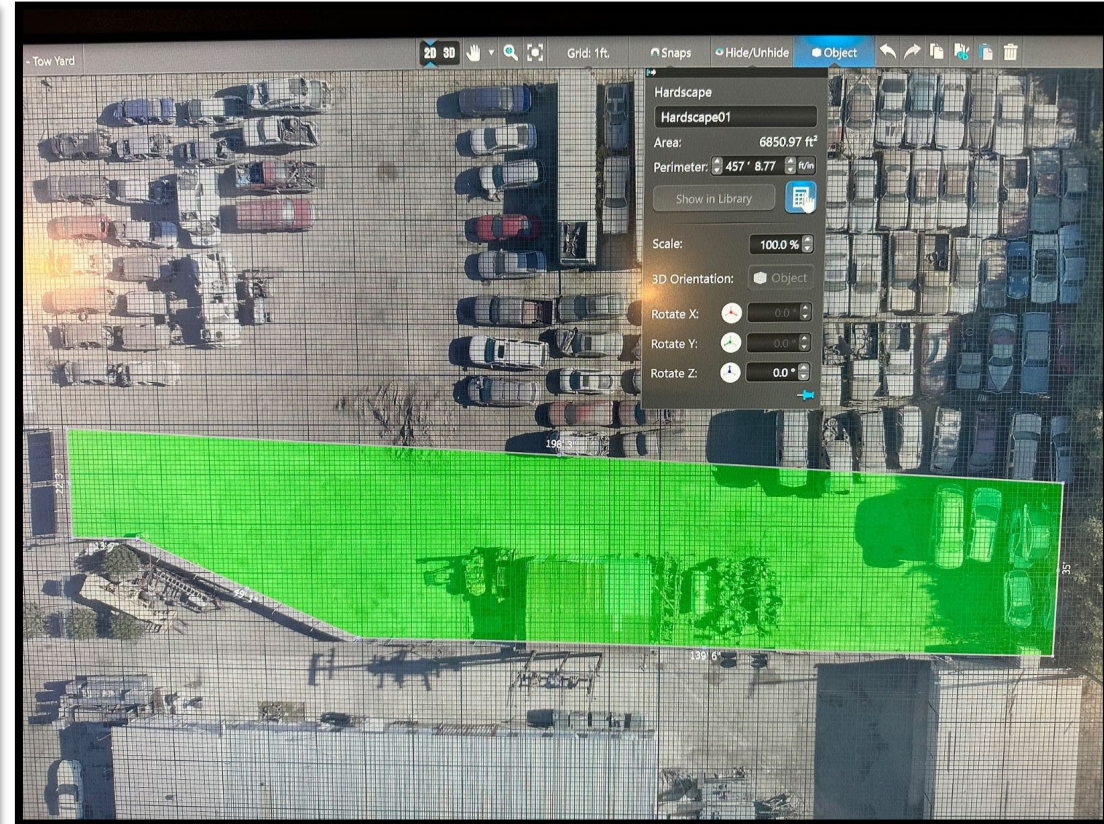
Fresno Police Dept. Wrongfully relied on Planning's Zoning Inquiry Decision And **Refused To Reinstate Bauer's Back On The Police Department's Towing Service Agreement As It Was Ordered** on March 30, 2023 By Mike Flores, Independent Hearing Officer.



# Planning Department Is Wrong; Bauer's Storage Yard Is Paved

- **Bauer's Put Base Rock Over Subject Storage Area As Instructed**  
After C-002 Approval Letter From Planning Dept. Mgr. Mike Sanchez's Dated August 5, 2011
- **Planning Department Denied Bauer's Intimations To View Lot, Relying On Police Department's Representations And Google Earth Aerials To** *Wrongfully Conclude Bauer's Subject Storage Yard Was Not Paved And Thus Did Not Pass C-002*

# Drone Aerials Of Bauer's Lot After Base Rock Removal 11/28/23







- **Google Earth Images Taken On Or About 11/5/23, Before Base Rock Removed**

# Planning Department's August 5, 2011 Approval Letter Unequivocally Approved Bauer's

- Bauer's Approved By Planning Manager Mike Sanchez in 2011:

Although the subject site does not have an approved site plan review application for this use, the proposed use has been determined to be a LEGAL NONCONFORMING USE. The use is considered nonconforming because it does not conform to current zoning regulations (no site plan approval). As a legal nonconforming use, the site may continue to legally operate as a tow yard with lien sales. All existing tow yards shall comply with the following minimum conditions:

- Same Language Copied From C-002 3iii.

**NOTE**-Directly Applies To Bauer's Now, Not All Towers As Prior Sentence

plan approval). As a legal nonconforming use, the site may continue to legally operate as a tow yard with lien sales. All existing tow yards shall comply with the following minimum conditions:

- a. The areas where cars or vehicle parts are stored and vehicles drive must be paved. The Applicant shall maintain a paved surface pursuant to the attached Exhibit A-1. The applicant shall also apply an additional layer of base rock, as necessary, within six months of the date of this letter, to those areas where towed vehicles will be stored.

# Bauer's Passed C-002 And Never Failed It

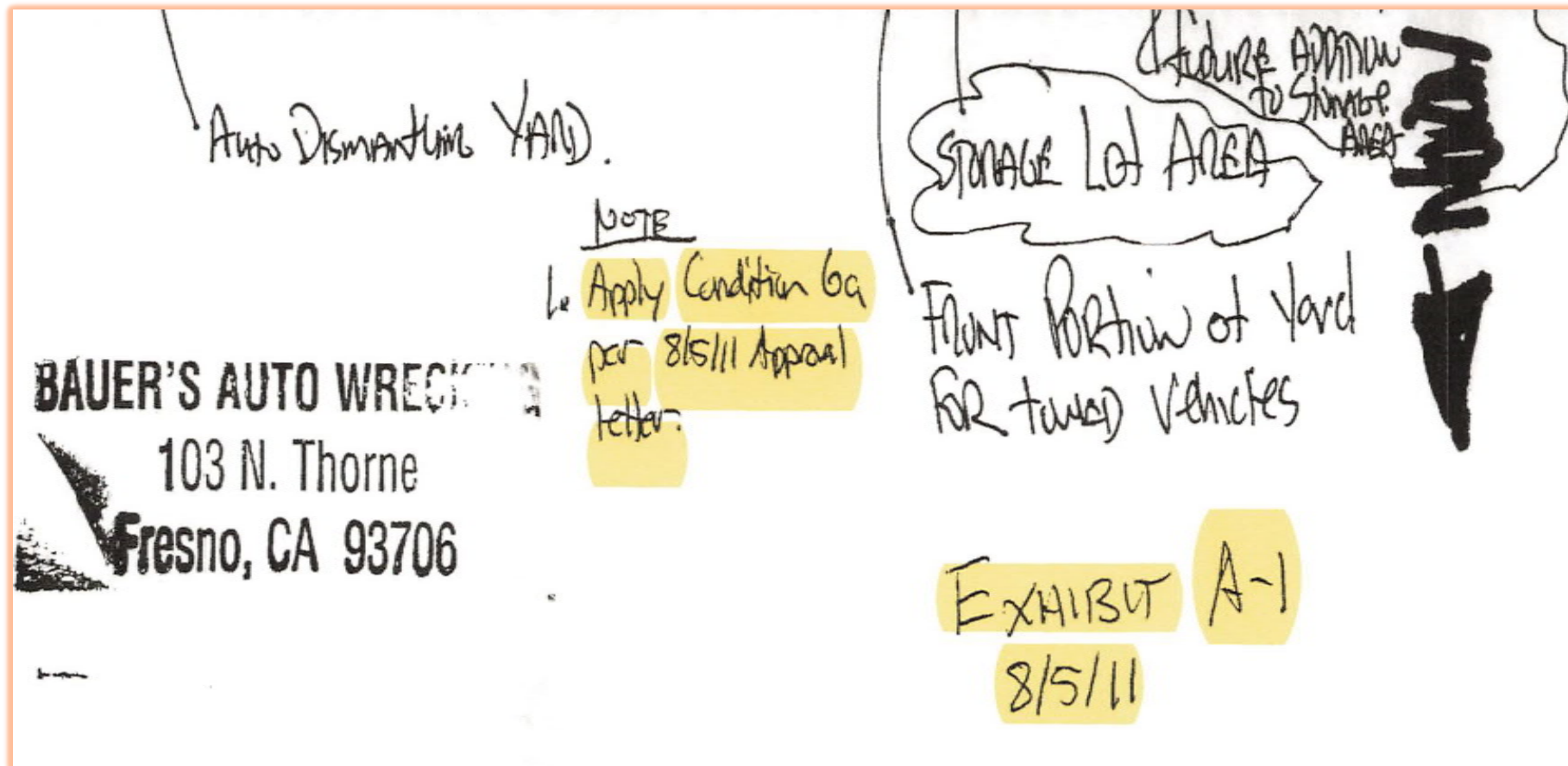
- Planning Mgr. Mike Sanchez Signed C-002 Policy & Procedure June 2011, And Then Signed Bauer's August 5, 2011 Approval Letter
- Bauer's Signed 2011 TSA, 2014 TSA, 2018 TSA and Extensions And Was Required To Pass C-002 Or Police Department Would Not Allow Bauer's On FPD Rotation
- Bauer's Was Grandfathered-in Because Was Towing Company Long Before 2006; Thus Did Not Have To Apply For Conditional Use Permit. Why Approval Legal, Non-Conforming Approval. (See **FMC Sec. 15-402.**)
- Exhibit A-1 To August 5, 2011 Approval Letter Provides "Approval Letter" In Mike Sanchez's Handwriting

# Bauer's Passed C-002 And Never Failed It

- Approval Letter ***Instruction To Add Base Rock As Needed In 6 Months—***  
You Don't First Require Business to Pave And Then Add Base Rock; Bauer's Was Paved
- Over 5,000 Feet Paving In Storage Yard As Required By Director's No. 208,  
Tow Agreement; Thus, Bauer's Passed C-002
- No Complaints Bauer's Violated C-002 And Planning Stated In 9/26/23  
Letter Bauer's Maintained Towing So Never Lost C-002 Approval Status

# Bauer's Passed C-002 & Never Failed It, Cont'd

## Exhibit A-1 To August 5, 2011 Approval Letter





# FMC: SEC. 15-402. DETERMINATION OF NON-CONFORMING STATUS.

## SEC. 15-402. DETERMINATION OF NON-CONFORMING STATUS.

A use, structure, site feature, or lot shall be considered non-conforming if it was created prior to the adoption of this Code, or any amendment thereto, and does not conform to its provisions. The Director shall evaluate all available documentation to determine that non-conforming uses, structures, and site features shall have Legal Non-Conforming status or Illegal Non-Conforming status as follows:

- A. Legal Non-Conforming Status.** A use, structure, or site feature shall be designated as having Legal Non-Conforming status if it was lawfully established under the regulations of the jurisdiction in which it was located at the time of its establishment and has continuously remained in compliance with all terms and conditions imposed upon the use, structure, or site feature upon its establishment or imposed upon it any time thereafter, based on evidence provided by the property owner, tenant, or applicant. Legal Non-Conforming status shall also be assigned if non-conformities were created by a public improvement, such as a street widening project.
- B. Illegal Non-Conforming Status.** A use, structure, site feature, or lot shall be designated as having Illegal Non-Conforming status if it was not lawfully established under the regulations of the jurisdiction in which it was located at the time of its establishment or has not continuously remained in compliance with all terms and conditions imposed upon the use, structure, or site feature upon its establishment or imposed upon it any time thereafter.

(Added Ord. 2015-39, § 1, eff. 1-9-16).