

Agenda Report

TO: CITY COUNCIL

DATE: OCTOBER 17, 2005

FROM: CITY MANAGER

SUBJECT: CALL FOR REVIEW OF CONDITIONAL USE PERMIT #4419,
1355 LINCOLN AVENUE

RECOMMENDATION:

It is recommended that the City Council:

1. Acknowledge that this action is categorically exempt from CEQA; and
2. Disapprove the Conditional Use Permit applications for Transportation Dispatch Facility (vehicle towing) and Vehicle Storage.

EXECUTIVE SUMMARY:

The applicant is requesting a Conditional Use Permit approval to allow vehicle towing and vehicle storage at 1335 Lincoln Avenue in conjunction with an existing vehicle repair business (Paul's Auto). This case has been active for two years during which the applicant knowingly operated the business without city approval, failed to pay citations issued by the city, and did not implement measures to respond to neighborhood concerns.

Recently the applications were disapproved by the Zoning Hearing Officer due to negative impacts on the adjacent residential neighborhood. On appeal, the applications were approved by the Board of Zoning Appeals who found that the neighborhood's concerns could be mitigated with a series of conditions (Attachments B and C) such as painting and fencing.

The community concerns raised at the public hearing in 2003 and again with the Zoning Hearing Officer in 2005 include: 1) truck traffic travels through the adjacent residential neighborhood; and 2) vehicle repair and storage on the site is unscreened from public view. At the time that these issues were initially raised two years ago, the staff report included several conditions of approval to mitigate the negative impacts. The conditions included new walls to screen vehicles, paint, and landscaping. Although the application was withdrawn, the applicant continued to operate the business and could have implemented the recommendations in an effort to be a good neighbor. During the last two years however, only a hand-full of the improvements, such as painting the buildings

(partially done), removing barbed wire (partially done), and new 'slurry seal' in the parking lot, have been implemented.

The approval decision was called for review by the City Council on September 22, 2005. Staff continues to recommend disapproval of both applications.

BACKGROUND:

The applicant first submitted for a Conditional Use Permit in 2003 for Vehicle Storage (see Attachment E for chronology). The Zoning Hearing Officer approved the application on November 19, 2003. Several neighbors opposed the application and appealed the decision. Upon informing the applicant's representative of the appeal, staff was informed that the applicant had chosen to withdraw the application.

However, the applicant proceeded to operate the towing service anyway, without the required Conditional Use Permit. Code Enforcement staff cited the applicant for not obtaining the Conditional Use Permit prior to opening. The Code Enforcement Commission found that there were grounds to require the cessation of the towing business, but the applicant appealed that decision, pending the submission and hearing of the current Conditional Use Permit application.

Per the City's rules on appeals, the applicant has been allowed to continue the towing operation in the meantime.

ANALYSIS:

Conditional Use Permit – Transportation Dispatch Facility.

The applicant has a contract with the American Automobile Association (AAA) to dispatch tow trucks. These tow trucks spend the majority of the day in the field and are only on-site if a vehicle they are towing is to be repaired on site, or if the vehicle does not have a specific location to be towed to and therefore must be kept at the site until it can be transferred. At night, the drivers take the tow trucks to their respective residences. The vehicles are dispatched from an office that has one desk and one computer. The computer receives the vehicle information from AAA and then a driver is dispatched.

The site is in an area developed with commercial and light industrial uses along Lincoln Avenue and single-family uses immediately to the west. The commercial and industrial uses in the area include building material and service uses and restricted industrial uses. The zoning district designation, CG-1, is similar to the General Commercial zoning designation, but includes additional land use regulations relating to large trucks (defined by the Zoning Code as weighing 10,000 pounds or more, unladen), intended to buffer the single-family residential areas from the commercial activity along Lincoln Avenue. These land use regulations restrict the operation of such large trucks to between 6 A.M. and 7 P.M.

However, based on the past operations on the subject site, the proposed operation would have a negative impact on the surrounding neighborhood. For example, photos submitted to staff show tow trucks parked on residential streets and vehicles kept outside of the facility adjacent to public streets. Additional concerns raised by residents include trucks exiting the site on Washington Boulevard, turning left, and traveling

through the residential neighborhood. Although the applicant has known about this concern of the neighbors, residents have testified that truck drivers continue to travel through the neighborhood.

The November 2003 staff report recommended several conditions to help improve the look and operation of the site. As noted above, the applicant withdrew this application and began operating the vehicle dispatch operation. However, in the time since the business opened, the site has not been significantly improved. Essentially, the applicant has known of several maintenance issues the City had recommended to improve the site (new walls, new painting, landscaping, etc.) but as of this point very little has been done.

Staff has received a variety of information from the applicant regarding the position that both the vehicle towing and vehicle storage are legal, non-conforming uses. Staff acknowledges that towing was a part of the business up until 1995, as stated by the previous owner, Bob Grossman in his declaration (submitted to the Board of Zoning Appeals). As a result, vehicles were towed by other towing companies to the site, presumably for repair. However, records do not show that the Paul's Auto continued to provide a towing service such that tow trucks were dispatched from the site, or that Paul's Auto itself provided a towing service. Therefore, it is staff's position that the towing operation at the site was discontinued in 1995 (per Mr. Grossman's declaration) and therefore cannot be re-established without compliance with the City's Zoning Code, specifically, approval of a Conditional Use Permit.

The applicant's representative has said that at the recent Board of Zoning Appeals hearing, the Board determined that the use was legal, non-conforming. However, staff has reviewed the audio tapes from the hearing and confirmed that while the discussion on this topic did occur, no motion was made to find the towing service use a legal, non-conforming. If such use were a legal, nonconforming use, there would be no need for the Board of Zoning Appeals to approve the use permit for the towing service.

Conditional Use Permit – Vehicle Storage.

According to the applicant, vehicles are towed to the site because they either need repair; or they are stored temporarily until the owners find an alternative location. In order to keep the vehicles on-site, or stored, a Conditional Use Permit must be obtained.

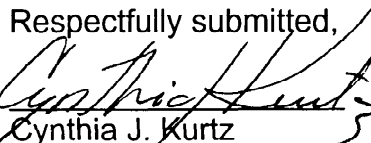
The area proposed for vehicle storage is the rear of the property, adjacent to Washington Boulevard. This rear area is gated and fenced with dilapidated materials. Because of the deteriorated condition of the fencing, vehicles are not adequately screened from public view and a negative appearance is the result. Even so, photos submitted to staff at prior hearings show vehicles not being stored in the rear of the property, but instead being kept outside of the fences next to the sidewalk. The applicant has stated that these are isolated cases; however documentation from the neighbors shows that these incidents occurred over a period of several months when the applicant was aware of the neighborhood's concern.


ENVIRONMENTAL DETERMINATION:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, Class 1 §15301, Existing Facilities).

FISCAL IMPACT:

The disapproval of this project is not expected to have a financial impact as no additional reviews will be necessary.

Respectfully submitted,

Cynthia J. Kurtz
City Manager

Prepared by

David Sinclair
Associate Planner

Approved by:

Richard J. Bruckner, Director
Planning and Development Department

Attachments:

- A. Specific Findings for Conditional Use Permit #4419
- B. Board of Zoning Appeals Specific Findings for Conditional Use Permit #4419
- C. Board of Zoning Appeals Conditions Of Approval for Conditional Use Permit #4419
- D. Department of Public Works Conditions Of Approval for Conditional Use Permit #4419
- E. Chronology

ATTACHMENT A
SPECIFIC FINDINGS FOR CONDITIONAL USE PERMIT #4419

Conditional Use Permit – Transportation Dispatch Facility.

1. *The establishment, maintenance, or operation of the use would, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use in that the proposed Transportation Dispatch Facility would perpetuate the existing negative impacts generated by the uses on the site. Based on site observations and photos, it is apparent that the auto repair operation associated with the dispatch facility does not appropriately maintain and screen the vehicles brought to the site. Vehicles are sometimes kept between the facility's walls the sidewalk. Bringing more vehicles to the site would increase the number of vehicles on site for repair. Further, the addition of truck trips would negatively impact the adjacent residential neighborhood. In addition, the noise generated by increased truck trips would be detrimental to the quality of life of the adjacent residential neighborhood.*

Conditional Use Permit – Vehicle Storage.

2. *The establishment, maintenance, or operation of the use would, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use in that the proposed Vehicle Storage would aggravate the existing problems generated by the uses on the site. Based on site observations and photos, it is apparent that the auto repair operation associated with the dispatch facility does not appropriately maintain and screen the vehicles brought to the site. This is evidenced by the fact that vehicles are sometimes kept between the facility's walls the sidewalk. Additionally, vehicles are sometimes repaired outside the facility, between the auto repair facility and the street. In addition, the noise generated by the moving of vehicles on- and off-site is a nuisance to the adjacent residential neighborhood and adversely affects living conditions.*

ATTACHMENT B
BOARD OF ZONING APPEALS
SPECIFIC FINDINGS FOR CONDITIONAL USE PERMIT #4419

Conditional Use Permit – Transportation Dispatch Facility.

3. *The proposed use is allowed with a Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Code.* Transportation Dispatch Facilities are permitted in the CG-1 zoning district with a Conditional Use Permit. In this case, the tow trucks spend the work day in the field towing vehicles and are taken home by the drivers at night. As conditioned, the project will comply with the applicable development standards of the CG-1 zoning district as well as regulations applicable to the appearance and operation of the facility.
4. *The location of the proposed use complies with the special purposes of this Zoning Code and the purposes of the applicable zoning district.* Specifically, the proposal meets the intent of the development standards as specified in Section 17.24 (Commercial and Industrial Zoning Districts). Many of the specific restrictions placed upon uses in the CG-1 zoning district relate to large trucks (10,000 lbs. or more). No trucks of that size are a part of the proposed use. Further, as conditioned, the project will comply with the applicable development standards of the CG-1 zoning district as well as regulations applicable to the appearance and operation of the facility.
5. *The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.* As conditioned, the proposed project is consistent with Objective 10, Diverse Economy, of the Land Use Element of the General Plan in that the project will allow for the continuation and expansion of an existing business to meet changing business requirements, while maintaining compatibility with the surrounding areas. Conditions of approval, including improved screening, vandalism repair, landscaping, operating hours, and restrictions on vehicle storage are recommended to ensure that the towing service is sensitive to the adjacent residential areas.
6. *The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.* The proposed Transportation Facility is proposed to be operated out of a single office with one desk and one computer. The tow trucks are in the field unless they are towing a vehicle to the site for repair or to be claimed by their owner. Conditions, including improved screening, vandalism repair, operating hours and restrictions on the duration of vehicle storage are recommended to ensure that the transportation dispatch facility is sensitive to the adjacent residential areas.

7. *The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City* in that the applicable development standards for the dispatch use include standards for adjacency to residential uses. These development standards, combined with additional conditions of approval related to operation of the dispatch use and the appearance of the site, will help ensure that the dispatch use does not negatively impact the adjacent residential neighborhood.
8. *The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection* in that the site is located in a commercial/industrial area and the implementation of the Zoning Code development standards for commercial uses and the enforcement of the conditions of approval related to the operation and appearance of the site will ensure that the site is well maintained and responsive to its proximity to a residential neighborhood.

Conditional Use Permit – Vehicle Storage.

9. *The proposed use is allowed with a Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Code.* Vehicle Storage is a permitted use in the CG-1 zoning district with a Conditional Use Permit. In this case, the vehicles stored on site in conjunction with the proposed towing operation are there only until the owners pick them up or until the operator of the towing operation can have them taken to another site. It is in the owner's interest to remove the vehicles from the site as soon as possible as a degree of liability is assumed with the vehicle when on the site. As conditioned, the project will comply with the applicable development standards of the CG-1 zoning district as well as regulations applicable to the appearance and operation of the facility.
10. *The location of the proposed use complies with the special purposes of this Zoning Code and the purposes of the applicable zoning district.* Specifically, the proposal meets the intent of the development standards as specified in Section 17.24 (Commercial and Industrial Zoning Districts). Many of the specific restrictions placed upon uses in the CG-1 zoning district relate to large trucks (10,000 lbs. or more). Further, as conditioned, the project will comply with the applicable development standards of the CG-1 zoning district as well as regulations applicable to the appearance and operation of the facility.
11. *The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of any applicable specific plan.* As conditioned, the proposed project is consistent with Objective 10, Diverse Economy, of the Land Use Element of the General Plan in that the project will allow for the continuation and expansion of an existing business to meet changing business requirements, while maintaining compatibility with the surrounding areas. Conditions of approval, including improved screening, vandalism repair, landscaping, operating hours, and restrictions on the duration of vehicle storage are recommended to ensure that the towing service is sensitive to the adjacent residential areas.

12. *The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
The storage of vehicles on site in conjunction to the towing operation will be operated in a manner that is responsive to the adjacent residential neighborhood. Conditions of approval, including improved screening, vandalism repair, operating hours and restrictions of vehicle storage are recommended to ensure that the towing service is sensitive to the adjacent residential areas.
13. *The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City* in that the applicable development standards for vehicle storage include standards for adjacency to residential uses. These development standards, combined with additional conditions of approval related to the method and duration of vehicle storage and the appearance of the site, will help ensure that the storage of vehicles does not negatively impact the adjacent residential neighborhood.
14. *The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity, in terms of aesthetic values, character, scale, and view protection* in that the site is located in an commercial/industrial area and the implementation of the Zoning Code development standards for commercial uses and the enforcement of the conditions of approval related to the operation and appearance of the site will ensure that the site is well maintained and cognizant of its proximity to a residential neighborhood.

ATTACHMENT C
BOARD OF ZONING APPEALS
CONDITIONS OF APPROVAL FOR CONDITIONAL USE PERMIT #4419

The applicant or successor in interest shall meet the following conditions:

1. The site/floor plans submitted for building permits shall substantially conform to the site/floor plans stamped "Received at Hearing August 17, 2005", except as modified herein.
2. The applicant shall comply with all other requirements of Chapter 17.24 of the Zoning Code that relates to commercial development in the CG-1 District, except as modified herein.
3. No more than four tow trucks shall be on site at any one time.
4. No vehicle impounding is permitted.
5. No vehicles towed to the site that are not being repaired on site shall be stored on the property for more than 30 days. A form approved by the Zoning Administrator shall be placed in all vehicles towed to the site indicating the date the vehicle was towed to the site for inspection by City staff.
6. A seven-foot tall solid masonry wall shall be constructed along the west property line. This improvement shall be completed within 90 days from the effective date of this Conditional Use Permit.
7. All existing chain-link fencing shall either be replaced with solid fence or wall (no chain link fence with slats) so that the rear of the property is not visible. This improvement shall be completed within 90 days from the effective date of this Conditional Use Permit.
8. All walls and fencing shall be maintained and kept in good condition.
9. All gates that access the rear of the site shall be kept closed except for when vehicles are being moved to or from the rear of the property.
10. No items other than vehicles may be stored at the rear of the site. Any other items shall be kept indoors at all times.
11. The storage areas at the rear of the site shall be maintained in good condition.
12. Within 30 days of the effective date of this Conditional Use Permit all barbed wire on the site shall be removed.
13. All graffiti or other types of vandalism shall be removed or repaired within 48 hours of the incident.
14. Within 60 days of the effective date of this Conditional Use Permit all buildings shall be re-painted due to the existing patch-work of graffiti abatement. The applicant shall submit paint color samples to the Zoning Administrator for approval.
15. The parking area along Lincoln Avenue shall be 'slurry sealed', re-stripped, and landscaped in accordance with the off-street parking requirements in Chapter 17.46 of the Zoning Code. These plans shall be submitted to the Zoning Administrator for

approval within 60 days from the effective date of this Conditional Use Permit. The work shall be completed within 60 days from the issuance of building permits.

16. No employee vehicles, tow trucks, or vehicles being repaired shall be parked on the street or in the required setbacks (five feet along Washington Boulevard and Lincoln Avenue). All vehicles shall be parked on-site in designated parking areas.
17. A ten (10) foot wide landscape planter shall be installed, irrigated, and maintained along Washington Boulevard. A five (5) foot wide landscape planter shall be installed, irrigated and maintained along Lincoln Avenue parallel to the existing sidewalks, except for where the current driveways are located. A landscaping plan shall be submitted to the Zoning Administrator for approval, in compliance with Chapter 17.44 of the Zoning Code. The landscape plans shall be submitted to the Zoning Administrator for approval within 60 days from the effective date of this Conditional Use Permit. The work shall be completed within 60 days from the issuance of building permits. All new trees shall be a minimum size of 15 gallons.
18. All existing and new landscaping shall be maintained and kept in good condition.
19. The property shall not be used for dismantling wrecked automobiles or for the storage or sale of used parts. There shall be no storage of vehicle parts or other materials outdoors. There shall be no storage of large trucks, recreational vehicles, or buses on the property.
20. The hours of operation of all businesses (Auto Repair, Vehicle Storage, and Transportation Dispatch Facility) on the property shall be no earlier than 8:00 A.M. and no later than 6:00 P.M. seven days a week. All deliveries shall also comply with these hours of operation. No vehicle repair shall occur on Sundays.
21. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
22. The proposed project, Case No. **PLN2005-00360**, shall comply with all conditions of approval, subject to monitoring by the City Condition Monitoring Coordinator. Condition Monitoring is required for your project. Contact the Code Compliance Staff at (626) 744-4633 to schedule an inspection. No fees are required for commercial businesses in the Enterprise Zone.
23. Vehicle repair shall not include body work or the painting of vehicles.
24. The Zoning Hearing Officer shall conduct a public hearing six months from the effective date of this Conditional Use Permit to ensure the effectiveness of, and compliance with, the conditions of approval.
25. Tow Trucks and delivery trucks shall only be permitted to make right turns onto Washington Boulevard to prevent additional traffic into the residential neighborhood.

ATTACHMENT D

MEMORANDUM - CITY OF PASADENA DEPARTMENT OF PUBLIC WORKS

DATE: April 6, 2005

TO: Denver Miller, Zoning Administrator
Planning and Development Department

FROM: City Engineer
Department of Public Works

RE: Conditional Use Permit No. 4419
1355 Lincoln Avenue

The Department of Public Works has reviewed the application for Conditional Use Permit No. 4419 at 1355 Lincoln Avenue. The conditional use permit is to allow a transportation dispatch facility to operate a tow truck dispatch service. Paul's Auto was purchased by Munther Haddad, formerly of Cliff's Towing, with the intent of continuing the existing vehicle repair operation and adding tow truck dispatch. A tow truck operation had operated on the site for many years previously, but was discontinued in the mid-1990's. The approval of this conditional use permit should be based upon satisfying all of the following conditions:

1. In order to provide for intersection improvements, the applicant shall dedicate to the City the land necessary to provide a 15-foot radius property line corner rounding at the southwest corner of Lincoln Avenue and Washington Boulevard for street purposes.
2. The applicant shall close any unused drive approach with standard concrete curb, gutter and sidewalk and shall repair any existing or newly damaged curb, gutter and sidewalk, avoiding any damage to existing street trees and using the City's Tree Protection Standards available from the Parks and Natural Resources Division (744-4514), along the subject frontage prior to the issuance of a Certificate of Occupancy.
3. Washington Boulevard was resurfaced in September 2002. If the street is excavated for utility connections prior to September 2007, extensive repaving of the street will be required. Excavations in the street for utility connections shall be as close as possible to each other and the pavement shall be restored contiguously between extreme excavations.
4. The project shall comply with the Tree Protection Ordinance (TPO) that provides protection for specific types of trees on private property as well as all trees on public property.

5. The applicant shall plant and maintain, for a period of three years, four officially designated street trees per the City approved master street tree plan on the Washington Boulevard frontage of the subject property and install an irrigation system for those trees. Locations will be finalized in the field by Department of Public Works staff. Trees must meet the City's tree stock standards and be planted according to the details provided by the Parks and Natural Resources Division. The trees shall be approved by the Forestry Supervisor prior to the issuance of a Certificate of Occupancy.
6. All costs associated with these conditions shall be the applicant's responsibility. Unless otherwise noted in this memo, all costs are based on the General Fee Schedule that is in effect at the time these conditions are met. A processing fee will be charged against all deposits.

DANIEL A. RIX
City Engineer

DAR:jo

ATTACHMENT E
Chronology

Paul's Auto Service located on site since 1951.

August, 2003

Cliff's Towing is taking over Paul's Auto and applies for a Conditional Use Permit to add towing services/vehicle storage on site.

November, 2003

Zoning Hearing Officer hears Conditional Use Permit. Staff recommends approval with conditions; neighbors speak in opposition; Zoning Hearing Officer approves with conditions (i.e. no Sunday hours, no guard dogs, etc.)

December, 2003

Neighbors appeal Zoning Hearing Officer decision. Applicant withdraws application.

April, 2004

Code enforcement issues four citations for operation of a towing facility without a Conditional Use Permit and for paving a portion of the site without a permit. Case referred to Code Enforcement Commission.

June, 2004

Case heard by Commission; staff recommends referral to City Prosecutor. Applicant says he will apply for Conditional Use Permit. Commission decision held in abeyance to allow applicant to apply for Conditional Use Permit.

September, 2004

Applicant applies for Conditional Use Permit. Staff finds application incomplete and requests additional materials.

January, 2005

Applicant has still not submitted complete application. Case is scheduled to return to Code Enforcement Commission for lack of compliance.

February, 2005

Applicant submits outstanding application materials and Conditional Use Permit application is deemed complete. Case is removed from Code Enforcement Commission agenda and placed on Zoning Hearing Officer agenda for Conditional Use Permit.

April, 2005

Hearing by Zoning Hearing Officer. Staff intends to recommend approval with conditions; changes recommendation to denial. Applicant requests continuance.

June, 2005

Zoning Hearing Officer denies application. Applicant appeals Zoning Hearing Officer decision to Board of Zoning Appeals.

August, 2005

Board of Zoning Appeals approves application with conditions.

September, 2005

City Council calls up Board of Zoning Appeals decision.

LAW OFFICES OF
ANN HAYES HIGGINBOTHAM
ATTORNEY AT LAW
76 SOUTH GRAND AVENUE
PASADENA, CALIFORNIA 91105

2005 OCT 17 AM 11:59

(626) 792-6741

Friday, October 14, 2005

Ms. Jane Rodriguez
City Clerk
City of Pasadena,
117 E. Colorado Blvd.
Pasadena, Ca. 91105

Via Fax and hand delivery (626-744-3921)

Re: Paul's Auto Service - October 17, 2005 City Council
meeting - Agenda Item No.6A

Dear Ms. Rodriguez,

On behalf of Paul's Auto Service, we hereby **withdraw our applications for conditional use permits for vehicle storage and vehicle dispatch, CUP # 4419**. Please share this letter with the Mayor and each member of the City Council and the City Attorney's office. Paul's Auto Service under new owner Munther Haddad has a legally non-conforming right to operate both of these uses, just as Bob Grossman and Doug Grossman had a legally non-conforming right to operate both of the uses when they owned Paul's Auto Service. The sale of a business does not render a legally non-conforming use illegal. Paul's Auto Service under Munther Haddad's ownership will continue to operate as a legally non-conforming use. Our legally non-conforming right includes, but is not limited to the following:

1. The right to store vehicles without limitation within the property boundaries.

10/17/2005
Item 6.A. (8:00 PM)

Oct 14 05 10:44p



2. The right to hire drivers and use tow trucks from the property without limitation.

3. The right to dispatch towing services from the property without limitation.

There is not now nor has there ever been a regulation under any Title of the Pasadena Municipal Code that regulates the location where vehicles can be stored on the site or the number of trucks or employees.

We have made this decision based on the following facts. First, the staff report prepared for the hearing on October 17, 2005 makes it clear that the City has no intention of giving us a fair hearing. The opening paragraph incorrectly states that Paul's Auto Service is operating illegally. Paul's Auto Service is not now, nor has it ever been operating illegally. The staff report cites as one example of illegality the failure to construct a wall - a \$40,000 cost item - when the requirement to build such a wall did not come into existence until 1985, when the zoning code was revised to place CG-1 zoning on this property. The staff concedes that Paul's Auto Service has operated on this site since 1951, without such a wall. Paul's Auto Service is not required to build such a wall now.

Secondly, by its conduct in this case, the City has made it clear that this is a personal attack on Munther Haddad. Paul's Auto Service operated for more than 20 years on this site after adoption of the CG-1 zoning in 1985, and the City of Pasadena never once suggested that it was operating in violation of the zoning code. Within days of Mr. Haddad assuming occupancy after purchasing the business from the Grossmans in April 2004, code enforcement staff began issuing citations alleging that the business was being operated without allegedly required conditional use permits. The city knows that the zoning code allows legally non-conforming uses to continue to operate (P.M.C. Section 17.12.020; 17.76.020), but nevertheless the City seems determined to drive this business from the premises.

Mr. Haddad's procedural and substantive due process rights are violated at every turn by the City. Staff recommendations were changed from approval to denial two hours prior to the hearing officer hearing in this matter on

April 20, 2004, and the City Manager herself stated on the record when this matter was before the City Council for possible call up that she ordered that this be done, because a positive staff recommendation is not what the neighbors want. This is an admission that the City is not proceeding in the manner required by law, but is acting to implement the neighbors' unreasonable desire that Paul's Auto Service be removed from the site and replaced with a different use. As I said in previous correspondence with each Council member in 2004 on the topic of the pending zoning code revision to make automobile repair a conditionally permitted use, the only legal way to remove Paul's Auto Service from the site is to purchase the business for its fair market value, purchase the property for its fair market value and pay the cost of relocating Paul's Auto Service to a new site. Instead of pursuing this legally correct avenue, the city is trying to do through the conditional use permit process what it cannot otherwise do legally - shut down a prosperous business operating as a legally non-conforming use in the Enterprise Zone. This is totally contrary to the City adopted policy of fostering business in the Enterprise Zone.

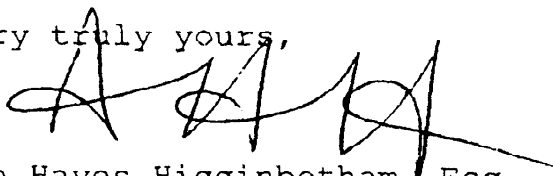
Mr. Haddad's rights to equal protection are also being violated. A similarly situated business, Discount Tires, at the corner of Green St. and El Molino Ave. was allowed to assume occupancy on a site previously occupied by Hilton Auto Service, and when there were objections, the city correctly responded that there was nothing it could do because Discount Tires had a legally non-conforming right to continue. Unlike here, the City did not argue that the change of user from a family owned business - Hilton - to use by a nationwide chain -Discount Tires - stripped them of their status as a legally non-conforming use. In our case, a few days after Munther Haddad assumed his occupancy of the premises under a lease, the City began issuing citations and fines. Clearly this is a personal attack on Munther Haddad.

By copy of this letter, I am requesting that Jonathan Pollard schedule a hearing on our Appeal of Order of the Code Enforcement Commission - Case No. CTP 2004-00729, dated June 18, 2004 of the Code Enforcement panel decision of June 3, 2004 to the full Code Enforcement Commission.

This appeal has been held in abeyance pending the outcome of these applications for CUPs, and we would like this appeal to be heard at the earliest possible time consistent with applicable notice requirements. We will conclusively demonstrate to the Code Enforcement Commission that we have a legally non-conforming use, just as we successfully did to the Board of Zoning Appeals.

It is a sad day in the history of the City of Pasadena when code enforcement staff are utilized to drive a long standing business in the Enterprise Zone like Paul's Auto Service out of business. That has been the agenda from day one. Paul's Auto Service and Munther Haddad will assert their rights to operate as a legally non-conforming use even in the face of such unfair treatment from the City.

Very truly yours,



Ann Hayes Higginbotham, Esq.
Attorney for Munther Haddad and
Paul's Auto Service.

Cc. Mr. Bob Grossman
Mr. Doug Grossman
Mr. Munther Haddad
Mr. Burke Farrar
Mr. Jonathan Pollard

605 West Washington Blvd
Pasadena, CA 91103
626/345-0039

Monday, October 17, 2005

City Council
City of Pasadena
100 North Garfield Ave
Pasadena, CA 91103

RE: CUP 4419

Dear Council Members

I write this to have my voice heard on this issue.

My name is Darrel Ramsey-Musolf and I am one of the original persons who spoke against this application at its first hearing in November 2003. Speaking with me were Joan Williams, Sandra Knox, Brian Williams and Nate (lives on Solita).

None of us wanted this non-conforming use (vehicle repair) to be expanded to allow a towing operation of any sort. We were also against any operation on Weekends, Evenings (past 6pm). This use abuts a multi-family use that are primarily low-income renter of Hispanic origin.

Since then, there has been Paul's Tow Trucks operating on residential streets, vehicles parked on the sidewalk, razor wire used with the fence, vehicles using the ADA sidewalk corners for means of egress.

This operation is a public nuisance that would be better suited for operation in an industrial zone and the flagrant operation without approval is just unconscionable.

It appears that now is the time to cease this use and revoke the business license. The staff reports clearly identify the contempt that this operation has toward the neighborhood as well as any Code or Zoning Regulation. With his past history, you are only fooling yourselves if you think that compliance will be forthcoming with a CUP approval.

Therefore, deny the conditional use permit and revoke the business license in order to demonstrate equity to the community as well as the consequences for operating outside of the municipal code.

Cordially,


Darrel Ramsey-Musolf

10/17/2005
6.A. 8:00 P.M.