

# PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING January 27, 2011

Prepared by: Derek Ogden, Associate Planner

<u>ITEM V-B:</u> APPEALS – PLANNING DIRECTOR'S ZONING DETERMINATION – IMPOUND YARDS – PROJECT # ZCC-003971

#### **REQUEST**

The Planning Director has made zoning determinations regarding a number of Impound Yards located within the City of Roseville. These determinations were made in association with the Police Department establishment of a Tow Rotation List, and as a result of a complaint. Several of these determinations have been appealed and will be the subject of the public hearing.

# **SUMMARY RECOMMENDATION**

The Planning & Redevelopment Department recommends that the Planning Commission take the following action:

A. Uphold the Planning Director's Zoning Determinations and deny the appeals.

## **SUMMARY OF OUTSTANDING ISSUES**

Several of the impound yard property owners or operators are dissatisfied with the Planning Director's determination and they have filed appeals. Listed below is a brief summary of each appeal.

- **701 Riverside Av.** Director determined this site is zoning compliant; Appeal contends a CUP is required.
- 204 Kenroy Ln. Director determined this site is zoning compliant; Appeal contends a CUP is required.
- 201 Derek Pl. Director determined this site requires a CUP for an impound yard; Appeal contends the site is zoning compliant because it is associated with an automotive repair business.
- 425 Clinton Av. Director determined the site is not complaint and has lost legal nonconforming status; Appeal contends site has historically included automotive repair and vehicle storage.

# **BACKGROUND**

On September 9, 2010 the City of Roseville received a letter from Richard and Sandra Keller of Classic Tow Services which claims that several vehicle storage sites are out of compliance with zoning regulations (Attachment 1). In response to this information Planning Department staff began to investigate the complaint. At the same time that the Keller's complaint was filed with the City, the Police Department held meetings to inform prospective tow operators about the City's Tow Rotation List. As part of these meetings the Police Department informed the operators that the City would be instituting a lottery system to limit the total number of operators on the rotation to a maximum of ten (10). The tow companies that applied during the thirty (30) day application period are listed in Attachment 3.

In addition to instituting the lottery system, the Police Department will also be instituting a two (2) year Tow Service Agreement (TSA). Previous TSA contracts for the tow rotation had been for a one year period. The TSA requires that tow operators locate their vehicle storage yards on a site which is zoned appropriately and therefore will allow them to be placed on the tow rotation list for the City.

In response to the complaint, Staff sent two letters to the Kellers which are included as Attachments 4 & 5 to this staff report. These letters detailed the Planning Department's response to the issues raised in the Keller's complaints. Subsequent to the letters responding to the Keller's zoning complaint the Planning

Director made a formal Zoning Determination for each site listed on the Tow Rotation list for 2011 and sent these determinations to the Tow Operators (Attachments 6-16).

## **EVALUATION**

The zoning determination for each storage site is listed below along with a discussion of the basis for the determination and a discussion of the basis of the appeals. Each site is listed in the following order; (1) Zoning compliant – no appeal filed; (2) Zoning compliant – appeal filed; (3) Not zoning compliant – no appeal filed.

# Zoning Compliant - No Appeal Filed

#### 400 Tahoe Av. - All Valley Towing

The property is zoned Light Industrial (M1). A Conditional Use Permit was approved for the property to be used as an Impound Yard in 2007 (CUP-000045). The Planning Director has made the determination that this site is zoning compliant. No appeal was filed.

## 111 Wills Rd. - Classic Tow

The property is zoned General Industrial (M2). A Special Use Permit (SUP) was approved for use as an outdoor car storage facility in 1989 (SUP 89-39). The Planning Director has made the determination that this site is zoning compliant. No appeal was filed.

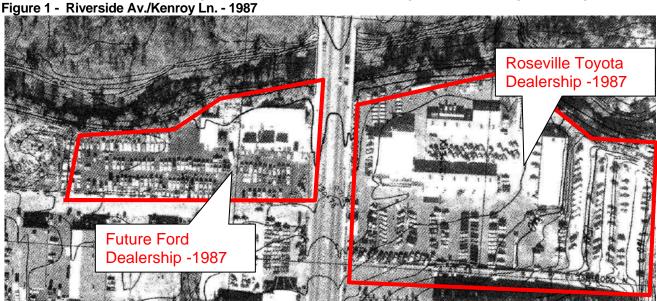
## 209 W. Ivy St. - Neighborhood Enterprise Towing

The property is zoned Light Industrial (M1). A Conditional Use Permit was approved for the property to be used as an Impound Yard (CUP 98-04). The Planning Director has made the determination that this site is zoning compliant. No appeal was filed.

# **Zoning Compliant – Appeal Filed**

### 701 Riverside Av. – Ace in the Hole Towing and Sierra Hart Towing

The property is zoned Industrial Business Park (MP). The Planning Director has made the determination that the site is zoning compliant. The site has been used as an automotive dealership (Roseville Toyota, Hubacher Cadillac, and used car sales), an automotive repair site, and as a vehicle storage site for more than 30 years. This is evident in the aerial photograph that was taken of the site in April of 1987 (see below and Attachment 17). The Planning Director made the determination that given the historic use of the site for outdoor automobile sales, storage, and repair that the site was legal nonconforming for storing vehicles.



Section 19.24.020(B) of the Zoning Ordinance states "a nonconforming use may be continued, provided that no such use shall be enlarged or increased, nor extended to occupy a greater area than that which it lawfully occupied before becoming a nonconforming use except as otherwise allowed in this chapter..."(Attachment 18). The Planning Director's determination was based on the fact that the Zoning Ordinance, before 1996, did not have an Impound Yard use type. Before the Impound Yard use type was added to the Zoning Ordinance in 1996, outdoor automobile storage required a Special Use Permit (SUP).

Figure 2 - 701 Riverside Av. - 2007



In addition to the legal nonconforming status for the site, a Special Use Permit (SUP 93-22) was approved by the City Council in August 1993 for vehicle sales and the temporary outdoor storage of cars (Attachment 19). This SUP allowed outdoor automobile storage which was the use type recognized by the Zoning Ordinance prior to the Impound Yard use type. The Director's zoning determination concluded that the history of the site as well as the SUP allow the property owner and lessee to impound vehicles on the site.

An appeal of this determination was filed by Richard and Sandra Keller (Attachment 21). They cite a lack of compliance with the conditions of approval for the SUP, an expansion of the nonconforming use, and reconfiguration of the site as reasons for the appeal. The Kellers contend that because the site is not using the exact configuration of the original SUP that permit is no longer valid. They state that areas are fenced off that were not originally designed to be fenced off and that landscaping was not installed per the SUP.

The Planning Director's zoning determination concluded that the fact that the site has a different configuration does not change its nonconforming status or validity of the SUP. And after the establishment of the use under the SUP the site has operated in substantial conformance with and in reliance upon the SUP.

### 204 Kenroy Ln. – Anderson Tow Service & Jake's Tow Service

The property is zoned Industrial Business Park (MP). The Planning Director has made the determination that the site is zoning compliant. The site has been used as an impound yard for approximately 16 years. A Special Use Permit (SUP 94-27) was approved in 1994 for Anderson Towing which allowed the outdoor storage of both operable and inoperable impounded and wrecked vehicles (Attachment 20).

The Keller's have appealed the determination and asserted that this site has been expanded. They also cite a lack of compliance with the conditions of the SUP in their appeal. The Planning Director has found that not only was a use permit approved for the site, but in addition the site was previously used as an automotive dealership (Future Ford) and has had outdoor automobile storage on the site for more than 30 years. An aerial photograph taken in 1987 confirms this fact (see Figure 1 above and Attachment 17). The Planning Director's determination was based on the fact that the Zoning Ordinance before 1996 did not have an Impound Yard use type. Because the outdoor storage of cars had been continuously occurring on the site

prior to 1996, the site was considered a legal nonconforming site for use as an Impound Yard. It is difficult to determine if the impound yard has been expanded because the entire site has historically been used for the outdoor storage of automobiles.

Figure 3 - 204 Kenroy Ln. - 2007



# Not Zoning Compliant; Appeal Filed

#### 201 Derek Pl. – H&L Towing

The property is zoned Light Industrial (M1). The Planning Director's determination is that the site requires a CUP to operate an impound yard.

H&L Towing has filed an appeal of this determination based on the fact that the towing business is associated with John's Auto Care and has operated without complaints on the site for the past several years (Attachment 25). In addition, the owner of the tow operation asserts that other similar businesses within the City were allowed to operate when they were located on the same property as an automotive repair business.

The Planning Director has made the determination that while the automotive repair business and impound yard may be located on the same property, they are in fact separate uses and should be regulated accordingly. The Zoning Ordinance under Section 19.08.040(A) requires that "if two (2) or more individual establishments or businesses conduct separate primary uses on a single parcel, each use shall be considered a separate and distinct primary use of that parcel."

According to City business license records, H&L Towing was established in late 2009. This is clearly after the Impound Yard use type was added to the Zoning Ordinance in 1996. Therefore a CUP is required for H&L Towing to operate an Impound yard at 201 Derek Pl. In addition, Impound Yards have unique requirements for security, noise, and separation from sensitive uses which may be different from an automotive repair use. A Conditional Use Permit is required to evaluate these operational characteristics.

## 425 Clinton Av. - LJ's Towing and Repair

The property is zoned General Commercial (GC). The Planning Director has determined that an Impound Yard is not a permitted use in the GC zone district.

According to City business license information LJ's Towing and Repair has been in business since 1998 at this location. Prior to LJ's the site was used for automotive repair and storage of cars associated with an

Oldsmobile dealership that was located on Riverside Av. In speaking with the manager of LJ's Towing and visiting the site staff has learned that the automotive repair portion of the business has been closed for approximately the last year and a half. Section 19.24.020(F) of Zoning Ordinance establishes that "a legal nonconforming use of a parcel which is discontinued for a period of six months shall be deemed abandoned." Given the fact that the automotive repair portion of the business has been closed for longer than six months, the outdoor automotive storage use has lost its legal nonconforming status.

## **Not Zoning Compliant; No Appeal Filed**

## 208 Kenroy Ln. - ABC Towing

The property is zoned Industrial Business Park (MP). The Planning Director has determined that a Conditional Use Permit is required to operate an Impound Yard on this site. Neither the operator nor the property owner appealed this determination.

In the past this site was used for outdoor storage but City records do not show that the site has ever been approved for outdoor automobile storage. The impounding of vehicles must be discontinued at this site.

#### CONCLUSION

Staff has outlined the basis for the Zoning Determinations and the basis for the appeals. The following discussion outlines the effect that the various actions available to the Planning Commission will have on each site.

- **701 Riverside Av.** (Appellant Richard Keller) If the Planning Commission were to uphold the Planning Director's determination, the outdoor automobile storage use could continue under the approved SUP and as a nonconforming use. Ace in the Hole Towing and Sierra Hart Towing would be allowed to operate an impound yard and would be eligible for the Tow Rotation List.
  - If the Commission were to grant the Keller's appeal, the operators would need to apply for and obtain a Conditional Use Permit to locate an Impound Yard on the site. Because they would not have had the necessary zoning approvals during the enrollment period, they would also not be eligible for the Tow Rotation List at this time.
- **204 Kenroy Ln.** (Appellant Richard Keller) If the Planning Commission were to uphold the Planning Director's determination the outdoor automobile storage use could continue under the approved SUP and as a nonconforming use. Anderson Tow Service and Jake's Tow Service would be allowed to operate an impound yard and would be eligible for the Tow Rotation List.
  - If the Commission were to grant the Keller's appeal, the two operators would need to apply for and obtain a Conditional Use Permit to locate an Impound Yard on the site. Because they would not have had the necessary zoning approvals during the enrollment period, they would also not be eligible for the Tow Rotation List at this time.
- 201 Derek PI. (Appellant Dain Lyon) If the Planning Commission were to uphold the Planning Director's determination H&L Towing would need to apply for and obtain a CUP to locate an Impound Yard on the site. H&L towing would not be eligible for the Tow Rotation List at this time.
  - If the Commission were to uphold the appeal the Impound Yard could continue to operate based on the fact that it is associated with an automotive repair business. This would also make H&L eligible for the Tow Rotation List. This could have other implications for the rest of the City if Impound Yards associated with an automotive repair facility are not required to obtain a CUP. There could be a lack of review and oversight of impacts that are associated with the operation of an impound yard that is located at an automotive repair facility.

425 Clinton Av. (Appellant Leland Pease and Diane Studebaker) - If the Planning Commission
were to uphold the Planning Director's determination LJ's Towing would not be able to operate an
Impound Yard on the site. LJ's Towing would not be eligible for the Tow Rotation List at this time.

If the Commission were to uphold the appeal the Impound Yard could continue to operate based on the fact that it is a legal nonconforming use. This would also make them eligible for the Tow Rotation List.

## **ENVIRONMENTAL DETERMINATION**

The zoning determination made by the Planning Director does not have the potential for causing a significant environmental effect, and therefore is not subject to CEQA. (CEQA Guidelines §15061(b)(3).

#### RECOMMENDATION

The Planning Department recommends that the Planning Commission take the following action:

A. Uphold the Planning Director's Zoning Determination and deny the appeals.

#### **ATTACHMENTS**

- 1. September 9, 2010 Letter from the Kellers
- 2. October 18, 2010 Letter from the Kellers
- 3. Zoning Table for the Tow Rotation List
- 4. October 8, 2010 Letter to the Kellers
- 5. November 24, 2010 Letter to the Kellers
- 6. Planning Director's Determination
- 7. Planning Director's Determination
- 8. Planning Director's Determination
- 9. Planning Director's Determination
- 10. Planning Director's Determination
- 11. Planning Director's Determination
- 12. Planning Director's Determination
- 13. Planning Director's Determination
- 14. Planning Director's Determination
- 15. Planning Director's Determination
- 16. Planning Director's Determination
- 17. Aerial Photograph of Riverside/Kenroy 1987
- 18. Zoning Ordinance Section 19.24 Legal Nonconforming Uses
- 19. SUP 93-22
- 20. SUP 94-27
- 21. Appeal from the Kellers 701 Riverside Av.
- 22. Appeal from the Kellers 204 Kenroy Ln.
- 23. Appeal from Diane Studebaker 425 Clinton Av.
- 24. Appeal from Leland Pease 425 Clinton Av.
- 25. Appeal from Dain Lyon 201 Derek Pl.
- 26. Appeal from Jayson Ubil 204 Kenroy Ln.

Note to Applicant and/or Developer: Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.