

CITY OF MINNEAPOLIS
CITY COUNCIL
PUBLIC SAFETY & REGULATORY SERVICES COMMITTEE

In Re: Building Wrecker Class B
License Held by
Keith Carlson d/b/a
C & H Excavating Co.

FINDINGS
AND
RECOMMENDATION

The above-entitled matter came before the Standing Committee on Public Safety & Regulatory Services of the Minneapolis City Council on May 2, 2007, in Room 319, City Hall, 350 South Fifth Street, Minneapolis, MN 55415, for purposes of a license hearing. The matter was heard and considered by the Committee, which now makes the following findings and recommendation:

FINDINGS

1. Keith Carlson, as president of C & H Excavating Co., holds a Class B Building Wrecker license issued by the City of Minneapolis.
2. On April 16, 2007 a Notice of Hearing was duly and properly served on the Licensee informing him that a license hearing would take place at the regularly-scheduled meeting of the Public Safety & Regulatory Services Committee of the Minneapolis City Council on May 2, 2007. The notice further informed the licensee that the hearing would consider five alleged license violations for the purposes of determining whether adverse license action should be taken against his business license. The notice specifically advised the Licensee of his right to be represented by counsel at the license hearing.

3. The notice described in detail the five alleged violations of previously agreed-upon and enforceable license conditions: (1) un-permitted weekend work occurring on March 24-25, 2007 at 1014 16th Avenue North; (2) lack of or failure to maintain proper fencing or securing of job site in February and March, 2007 at 1014 16th Avenue North; (3) lack of fencing or securing of job site at 1115 25th Avenue North; (4) failure to complete contract job within ten days at 1115 25th Avenue North; and (5) failure to complete contract job within ten days at 1014 16th Avenue North.

4. The license hearing took place as noticed and scheduled on May 2, 2007. The Licensee appeared at the hearing and testified in his own behalf. He was not represented by counsel. Inspectors Julie Casey and Wayne Murphy presented the case on behalf of the Division of Licenses and Consumer Services. Each inspector testified at the hearing and the Division submitted an evidence packet which was accepted into evidence at the hearing. The license hearing was completed and closed at the end of testimony on May 2, 2007. Any subsequent attempt by the Licensee or counsel hired by the Licensee to submit additional evidence after the close of the license hearing on May 2, 2007 is not timely. The Licensee has been afforded proper notice and hearing in this matter.

5. The evidence submitted and testimony adduced at the license hearing indicated that on September 7, 2001 the parties entered into a binding license settlement agreement which imposed several mandatory conditions upon the continued operation of the Licensee's business, inclusive of the conditions governing weekend work, fencing and contract completion deadlines as referenced in Finding #3, above. The evidence clearly indicates—and at hearing the Licensee did not substantially dispute—that the five violations as alleged by city staff did occur and that by operation of the 2001 conditional licensing agreement, such violations may result in further

adverse license action. The evidence supporting the violations is substantial and persuasive and includes time-stamped photographs and dated city records establishing the unsecured and unsafe condition of job sites as well as the dates that contracts were awarded, permits pulled, and jobs completed. Such evidence and testimony indicates that the two referenced jobs took well in excess of the allotted ten days for completion and that the job sites were not properly secured or maintained with fencing, creating an attractive nuisance and substantial health and safety hazard. Additionally, the evidence and testimony establishes that step removal work at 1014 16th Avenue North was impermissibly completed over the weekend of March 24-25, 2007 without the required after-hours permit in violation of Minneapolis Code of Ordinances § 389.70 as well as the conditional license agreement.

6. At hearing in this matter, the Licensee did not offer testimony or evidence denying the violations as alleged by city staff. The Licensee did, however, state that financial constraints and operational cash flow issues hindered his ability to timely complete the jobs. He stated that he was dependent upon the cash flow from one job in order to timely complete or start a subsequent job as opposed to having the business capacity to freely start work on any accepted job and timely work towards its completion. With regard to the 1115 25th Avenue North job the Licensee testified that he calculated the time it took him to complete the job at “close to 60 days” which still far exceeds the requisite ten-day limit applicable to his business license. With regard to the 1014 16th Avenue North job the Licensee conceded that he told city staff that they would be within their rights to charge him liquidated damages based on the untimely completion of the work and that he would have “certainly” paid such penalties. The Licensee did not address the un-permitted weekend work allegation nor the allegations of failure to properly fence and secure

the job sites, instead stating that he believed the proper licensing sanction should consist of financial and contractual penalties as opposed to the proposed license revocation.

Therefore, based on the foregoing Findings, the Committee makes the following recommendation:

RECOMMENDATION

1. Minneapolis Charter Chapter 4, Section 16 provides that “any license issued by the authority of the City Council may be revoked by the City Council at any time upon proper notice and hearing for good cause.” The established violations of Minneapolis ordinance and the binding conditional licensing agreement freely and knowingly entered into by the parties constitute good cause for the imposition of adverse license action in this matter, and based on the nature of the violations, their scope and severity, and also based on the previous licensing history of the Licensee as evidenced in the record, it is hereby determined that **LICENSE REVOCATION** is the appropriate sanction in this matter.

2. That these Findings and Recommendation be adopted by the City Council and made part of the official record.