CHRISTENSEN, LAUE & RASMUS, P.A.

ATTORNEYS AT LAW
SUITE 400
5101 VERNON AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55436

JOSEPH J. CHRISTENSEN†*
ROBERT P. LAUE
R. DANIEL RASMUS
GREGORY D. LUCE
MICHAEL W. PLAMBECK
CHARLES A. DELBRIDGE

TELEPHONE (952) 927-8855 FACSIMILE (952) 927-5427 Walter C. Gustafson
Of Counsel
(1981 - 2004)

†Real Property Law Specialist Certified by Minnesota State Bar Association *Also Admitted in Wisconsin

May 10, 2007

VIA FACSIMILE, E-MAIL AND HAND DELIVERY

Don Samuels Minneapolis City Council 307 City Hall 350 South Fifth Street Minneapolis, MN 55415

RE: Building Wreckers License – Class B

Keith Carlson and C & H Excavating Company

Dear Counsel Member Samuels:

This letter follows a telephone message I left with your office yesterday. Our firm represents Mr. Carlson and C & H Excavating. However, we were not retained by Mr. Carlson until <u>after</u> the hearing last week concerning his Class B Building Wrecker's License (the "License"). As you may recall, Mr. Carlson appeared before your Public Safety and Regulatory Services Committee, at which time your Committee heard evidence concerning the status of Mr. Carlson's License. It is my understanding that the Committee will recommend that the License be revoked and that this recommendation will be submitted to the full Council at its meeting scheduled for tomorrow, May 11.

I am writing this letter to request that you and your committee reconsider the decision to revoke Mr. Carlson's License. Specifically, I request that the matter be referred to an Administrative Law Judge for a full evidentiary hearing. Alternatively, I request that the matter be returned to your Committee for a rehearing.

There are at least three reasons to support this request: (1) the record supporting the committee's decision is inadequate, (2) the evidence is not sufficient to sustain the decision, and (3) Mr. Carlson has been treated unfairly.

1. The Record is not Adequate

I believe there is an inadequate record to support the Committee's decision to revoke Mr. Carlson's License. I have contacted the City Clerk's Office – it appears there are no written findings or conclusions resulting from the hearing last week. Rather, all that exists is a conclusory, one sentence recommendation for the Council to consider.

Importantly, Mr. Carlson's testimony and evidence opposing the City's desire to revoke the License is not contained in any recorded form.

If the City Counsel votes to revoke Mr. Carlson's License, his remedy, as you may be aware, would be to request a review of the City's decision by the Minnesota Court of Appeals. It is likely that the City's decision would be overturned because of the inadequacy of the record in this case. See Hard Times Café, Inc. v. City of Minneapolis 625 N.W. 2d 165, 174 (Minn. Ct. App. 2001) (noting that governmental bodies must take seriously their responsibility to develop and preserve a record that allows for meaningful review by appellate courts). An Administrative Law Judge is much better suited to hear evidence and develop a meaningful record related to the revocation of a license. I respectfully request that your Committee refer the matter related to Mr. Carlson's License to an Administrative Law Judge for rehearing so that Mr. Carlson has a full and fair opportunity to present his case for maintaining his License with the City of Minneapolis.

2. The Evidence is Not Sufficient to Sustain the Decision

I do not believe the evidence cited by the City is sufficient to sustain the decision to revoke Mr. Carlson's License. I have reviewed the "evidence packet" that was supplied by City Staff to support the recommendation to revoke Mr. Carlson's License. The bulk of the evidence in that packet cites events that occurred prior to 2001 – more than six years ago. If that evidence was insufficient six years ago to revoke Mr. Carlson's License, it is not sufficient now. Moreover, it is inappropriate to use this past evidence in the manner it was apparently used at the hearing with your Committee. Clearly, the past evidence standing alone is not sufficient to revoke Mr. Carlson's License. For a period of six years there were no complaints related to his work with the City sufficient to revoke his license. It is unclear from the record what weight was given to this evidence of past activity. Accordingly, Mr. Carlson will have another good issue for the Court of Appeals to consider in the event the City decides to revoke his License based on the record developed to date.

Concerning the two "current events" the City is using to justify its decision to revoke the License, one of those alleged events occurred in 2005 - i.e., the demolition at 1115 25th Avenue North. An event that occurred over two years ago cannot be characterized as "current". No action was taken when the event occurred. A reviewing court may be very interested in knowing why the City is interested in criticizing Mr. Carlson for the event now.

More important, perhaps, is understanding the context surrounding any delay that may have occurred in Mr. Carlson finishing that project. I believe Mr. Carlson testified at the hearing that the City did not pay him for a previous project and that this lack of payment by the City was a direct cause of any delay in finishing the project at 1115 25th Avenue North. As the evidence packet indicates, Mr. Carlson was working on the 1115 25th Avenue North project during the summer of 2005. This demolition involved a property where a fire occurred. As you are no doubt aware, demolition of a property

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involving a fire requires hauling the debris to a special landfill that can handle asbestos. The asbestos landfill requires a prepayment for all deliveries.

As Mr. Carlson testified at the hearing, he is a smaller operator and has limited credit resources to use on projects. His credit limit was reached during the summer of 2005 because the City had not paid him for a project he had completed in June of that same year at 3838 Bryant Avenue North. For no good reason, the City did not pay Mr. Carlson until September for the Bryant Avenue project. When he was finally paid, he was able to prepay the landfill owner so he could haul the debris from the 1115 25th Avenue North site. City records will establish the fact that the City did not pay Mr. Carlson as required pursuant to the 3838 Bryant Avenue project. I believe any Court or judge would and should conclude that the City's actions were to a large part responsible for any delay associated with Mr. Carlson completing the 1115 25th Avenue North project.

Concerning the 1014 16th Avenue property, the other "current" event alleged by the City, there are several factors outside of Mr. Carlson's control that caused delay in completing that project. I believe Mr. Carlson testified at the hearing, and can establish, that the City did not officially notify him that he could begin work on this project until four weeks after the project had been awarded to him. Mr. Carlson began working on the project in January during a period of mild weather. As you may recall, February was an extraordinarily cold month and it was very difficult for Mr. Carlson to work during this time-period. Additionally, the two strong snow storms that dumped large amounts of snow in our area in March made it impossible for Mr. Carlson to work on the project for several days, if not weeks. All totaled, there are many weeks of delay that are not attributable at all to acts or inactions on the part of Mr. Carlson. Mr. Carlson concedes that he may have completed this project one to two weeks late. However, the appropriate remedy for the City in such situation is not to revoke Mr. Carlson's license. Rather, the liquidated damages/civil penalty provision of the contract would be more the appropriate means with which to deal with Mr. Carlson and his company.

3. Mr. Carlson has been Treated Unfairly

Mr. Carlson can and, did show a pattern of unfair, arbitrary actions taken by City representatives toward him. I have already outlined above the delay in payment related to the 1115 25th Avenue North project. Similarly, the City failed to pay Mr. Carlson \$4,400.00 associated with his work on the project. Mr. Carlson's contract indicated that the estimated amount related to the work was \$16,000.00 to \$18,000.00. Asbestos removal was to be included as an additional payment over and above the base contract amount (See copy of City Purchase Order attached to Mr. Carlson's evidence packet). Mr. Carlson submitted invoices indicating he paid \$4,400.00 dollars for the asbestos removal. To date, the City has refused to pay this amount, despite its clear obligation to do so.

Besides non-payment from the City, Mr. Carlson has had bids taken away from him in situations where he has been the low bidder. For instance, in June of 2005, Mr. Carlson bid on a project at 413 24th Avenue North. Mr. Carlson was told he was not the

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low bidder on the project. However, when Mr. Carlson confronted City staff and reviewed the bids in the presence of City staff, staff acknowledged that Mr. Carlson was indeed the low bidder on the project. Nonetheless, Mr. Carlson was not awarded the work on this project.

In January of 2007, Mr. Carlson was the low bidder on a project located on 315/317 31st Avenue North. Several weeks after the bidding process was closed, Mr. Carlson received a letter from the City inquiring why he had not begun work on the project. Mr. Carlson responded by stating that he had no yet received the official "Notice to Proceed" from the City. The City has acknowledged that it had not sent the Notice to Proceed, but nonetheless awarded work on this project to another vendor.

Summary and Conclusions

Based on the above, it should be apparent that there are several problems with the City's decision to revoke Mr. Carlson's License. Mr. Carlson has performed excavation and demolition work for the City for many years. He had done consistently high quality work for the City, and many City employees have told Mr. Carlson that they would testify in his behalf. However, when approached to draft a letter in support of this request for rehearing, City employees stated they would not submit such a letter because of fear of retaliation if they supported Mr. Carlson. Mr. Carlson should be allowed a full hearing in front of an Administrative Law Judge where he can subpoena witnesses to testify on his behalf.

The contracts with the City related to Mr. Carlson's License represent his livelihood. It is not fair or just for the City to take away his License when there is no good cause to do so. Based on the above, I respectfully request that your Committee reconsider its recommendation to revoke Mr. Carlson's excavating License. Specifically, I request that:

- The recommendation of the Public Safety and Regulatory Services Committee to revoke Mr. Carlson's License be removed as an agenda item from the May 11 City Council Meeting;
- The matter concerning Mr. Carlson's License be referred to an Administrative Law Judge for a full hearing on the merits; or
- The Pubic Safety and Regulatory Services Committee allow Mr. Carlson to reappear for a full hearing and presentation on the merits of this matter.

Thank you for your consideration of this request. Please contact me any questions related to this matter. I look forward to hearing from you.

Sincerely,

CHRISTENSEN, LAUE & RASMUS, P.A.

R. Daniel Rasmus Attorney at Law

RDR/lp Enclosures

cc: Keith Carlson

Joel Fussy, Esq. (w/o enclosures via fax and e-mail only) Lee Wolf, Esq. (w/o enclosures via fax and e-mail only)