

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY COUNCIL OF THE CITY OF ST. PAUL

In the Matter of the
License Application of
David A. Sweno, d/b/a
Sweno Recycling, 551
Brunson Street, St.
Paul, Minnesota

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Monday, February 24, 1992, at Room 1503, City Hall Annex, 25 West Fourth Street, St. Paul, Minnesota. The record closed on February 24, 1992, at the conclusion of the hearing.

Thomas J. Weyandt, Assistant City Attorney, 800 Landmark Towers, 345 St. Peter Street, St. Paul, Minnesota 55102, appeared on behalf of the City of St. Paul. David A. Sweno, 551 Brunson Street, St. Paul, Minnesota 55102, appeared on his own behalf.

This Report is a recommendation, not a final decision. The City Council of the City of St. Paul will make the final decision after reviewing the record which may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to section 310.05 of the City's Legislative Code, the Council will afford the Applicant the opportunity to present oral or written arguments to it prior to taking final action. The Applicant should contact Mr. Weyandt to determine the procedures for filing such argument or appearing before the Council.

STATEMENT OF ISSUE

The issue in this case is whether the City should grant or deny the application of Mr. Sweno for a recycling collection center license for the premises located at 551 Brunson Street in St. Paul, Minnesota.

Based upon all of the evidence and argument in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. David Sweno has operated an aluminum can recycling collection center since approximately October 1985. In September of 1991, he was notified by the Zoning Commission of the City of St. Paul that he needed a license.

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On approximately October 1, 1991, Mr. Sweno applied for a recycling collection center license for Sweno Recycling/Gopher State Salvage. The

center was to be operated on the premises located at 551 Brunson Street, St. Paul, Minnesota. Mr. Sweno paid a fee of \$365.00 at the time of his license application. This fee had not been returned by the City as of the date of the hearing. (City Exhibit 4; Sweno Exhibit A.)

3. In response to Mr. Sweno's application, Clifford Holmberg, a City Building Inspector and Construction Specialist, went to 551 Brunson Street on October 14, 1991, to inspect the premises. A recycling operation was going on at the time. (City Exhibit 5.)

4. The building, located at 551 Brunson Street, is a dilapidated structure which is more than 50 years old. The outside walls are out-of-plumb, there is an extreme sag in the roof, and many of the rafters are cracked. The roofing is in very poor condition. At the time of the October 14, 1991, inspection, it was possible to look up through the roof sheathing and see the sky,

5. Based on his October 14, 1991, inspection, Mr. Holmberg determined that the building was dangerous and faced a risk of collapse.

6. Mr. Holmberg and Philip J. Owens, a City Fire Prevention Inspector and Mr. Holmberg's Supervisor, went back to inspect the premises again in January of 1992 at the request of the Assistant City Attorney. In a memorandum issued by Mr. Owens to the Assistant City Attorney dated January 17, 1992, Mr. Owens noted that the siding of the building had deteriorated and was in poor repair, and that the siding was loose, torn, or missing in several areas on the exterior, exposing the wooden under-covering to the elements. Mr. Owens further indicated that "[t]he building is generally aged and in a severe state of deterioration and disrepair. It outwardly appears structurally unsound." Mr. Owens stated, "It is the opinion of the Fire Prevention Division that the building is unsound, and poses a distinct hazard to both the public who enter the building to transact business and to employees assigned to work within the building." The memorandum written by Mr. Owens goes on to identify the following observations made during his inspection:

1. A significant roof deviation or sway is notable from the exterior of the building
2. The exterior roof line is also bowed out of plumb at the eaves
3. The exterior walls are bowed out of plumb three to seven inches in the areas closely observed
4. There are apparent long term roof leaks. The damage from which can be observed from inside the building. In at least two locations you can see outside through the overhead roof covering. It should be noted, that between the first inspection and today's inspection, that roll roofing paper has been placed over the deteriorated roof, but is not much improvement in providing weather resistance, as

the roof appeared to have been leaking recently. There is also little weather resistance in the area of the building where the roof eaves meet the wall and you can see through to the outside in several locations.

5. Six to ten of the roof rafters have broken or cracked areas along the horizontal axis and display estimated one-half to three-inch deviations or separations This appears to have been caused by stress placed upon these critical structural elements by deterioration, inadequate dimension, poor design and construction, or combinations of these factors.
6. The interior finish or wall covering of the building appears to be cardboard and vinyl sheeting. These materials are inappropriate for exposed wall finish and would contribute significantly to the spread of fire throughout the building.
7. There appears to be little insulation within the walls of the building and there is no insulation overhead. At the time of this inspection, there was no heat in the building, the air temperature was 16 degrees Fahrenheit with a windchill of -4 degrees Fahrenheit. The employee assigned to work in the building was sitting in his car upon our arrival attempting to warm himself.
8. There is a wood stove installed in the building. The stove does not appear to be a listed unit nor does it appear to be an approved installation. The employee said that he was out of wood for the stove and that no further supply had been provided. The stove could be a significant fire hazard to the building in view of combustible storage in the building and the poor installation.
9. There is no plumbing in the building. No water and no restroom. The employee says he must relieve himself outside behind the building. The building is adjacent to occupied dwellings and a travelled alleyway
10. The building electrical system is substandard and imposes a significant fire hazard. Lighting throughout the building is supplied via extension cords and multi outlets with the cords strung through the rafters rather than by the building fixed wiring as is required. Several of the extension cords are spliced and are of mixed wire gages [sic]. There are open electrical junction boxes and exposed wiring. The electrical system supplying power to the metal compacter appears to be in somewhat better repair.

Mr. Owens concluded that "[t]he aged and deteriorated condition of the building and the failure of significant structural building components has rendered the building unsafe for human habitation or use." Mr. Owens also noted that it appeared that "repairs required to bring the structure into

compliance would in all probability exceed 50 percent of the value of the building. The building should be immediately vacated and razed."

7. At the time of the January inspection, Mssrs. Holmberg and Owens noted that some rafters had been "scabbed" (i.e., additional material had been placed alongside the rafters) but, in the inspectors' opinion, such efforts are not adequate to repair the roof.

8. Pictures taken by the inspectors during the January 1992 visit show deviation in the verge of the roof, deviation along the eaves in the center, deterioration in the brick exterior and outside siding, a bowed-out wall on the south side of the building, and a wood stove inside the building. (City Exhibits 6-1 to 6-9.)

9. The wood stove was not certified by Underwriters Laboratory as required by law and was not installed in accordance with code requirements.

10. It would cause several thousand dollars to bring the business premises into compliance with applicable code requirements. Such a cost would probably exceed 50 percent of the property value of the building. (See City Exhibit 5.)

11. Mr. Sweno's license application was denied because the building was determined to be unsafe for human habitation or use. (City Exhibit 5.)

12. The City issued an order condemning the building on January 28, 1992. The owner of the building was notified that the building must either be brought into compliance or vacated by February 28, 1992.

13. The City has also issued Mr. Sweno a citation for operating a building without a license.

14. The City has no record that a certificate of occupancy has ever been issued for the premises or that a licensed business has ever been operated at that location.

15. Despite record snowfalls with heavy water content during the winter of 1991-92, the building was still standing as of the date of the hearing.

16. Due to lack of maintenance, building deterioration, and structural deformities and deviations, the business premises are unsound and pose a danger to the health and welfare of individuals who enter the building to transact business and employees assigned to work within the building.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction over the subject matter of this proceeding pursuant to sections 310.05 and 310.06 of the St. Paul Legislative Code and Minn. Stat. 14.55.

2. The Applicant received timely and proper notice of the hearing in this matter and the City of St. Paul has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Section 310.06 of the St. Paul Legislative Code permits the City Council to take adverse action (including license denial) against an applicant for a license in accordance with the procedures outlined in section 310.05 of the St. Paul Legislative Code. Section 310.06(b) provides that such adverse action may be based on one or more of the following reasons:

(7) The activities of the licensee in the licensed activity create or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his work or activity in an unsafe manner.

(8) The licensed business, or the way in which said business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

4. Section 408.01 of the St. Paul Legislative Code provides that "[n]o person shall engage in the business of operating a recycling collection center or a recycling processing center within the city without a license. A separate license shall be held for each business premises or auxiliary location within the City."

5. Section 408.04 of the St. Paul Legislative Code provides that applications for recycling collection center licenses shall be forwarded to the Building Inspection and Design Division, the Fire Department, and the Division of Public Health. The Code goes on to require that each of these offices complete due investigation and report to the Council through the inspector within 45 days.

6. Section 408.05(a) provides that recycling collection center licenses must comply with the following conditions:

(6) No fire hazards shall exist on the premises.

(7) The premises shall be maintained in a clean and orderly condition free of rats or other vermin, wastes and standing water

7. The operation of a recycling collection center at 551 Brunson Street in St. Paul creates a serious danger to the public health, safety or welfare, and permits conditions that unreasonably endanger the safety and health of members of the public. Fire hazards exist on the premises, the premises are not maintained in a clean and orderly condition free of standing water, and the building is structurally unsound and in a state of disrepair. The Applicant thus has violated St. Paul Legislative Code 310.06(b)(7) and (8)

and 408.05(a)(6) and (7).

B. The violations of applicable provisions of the St. Paul Legislative Code by the Applicant on various occasions between October 1991 through January 1992 subject the Applicant to adverse action under St. Paul Legislative Code 310.05 and 310.06.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the St. Paul City Council deny the application of David A. Sweno for a recycling collection center license.

Dated this 25th day of March, 1992.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape Recorded (Tape No. 11, 606)

NOTICE

The City is respectfully requested to serve its final decision upon the Administrative Law Judge by first class mail.

MEMORANDUM

The Applicant does not believe that the structure in which he operates a recycling collection center faces a risk of collapse and has requested that the City issue the license and allow him to remain in the building until he is able to relocate his business. The City's witnesses admitted that it is frequently difficult to predict with certainty whether a building will actually collapse. As detailed in the Findings of Fact above, however, the City inspectors found a multitude of serious problems with the structural integrity of the building during their inspections of the business premises. The Applicant did not provide testimony which undermined the accuracy of the observations made by the City inspectors with respect to the building's extreme state of deterioration and disrepair. There is ample support in the record for the inspectors' determination that the building should be immediately vacated and razed because it poses a hazard both to employees of the Applicant's business and members of the public transacting business with the Applicant. Accordingly, the Administrative Law Judge has recommended that the City Council deny the Applicant's application for a license to operate his recycling business at this address. If the City Council concurs that the application should be denied, it will be appropriate for the City to return the fee paid by the Applicant for the license.

B.L.N.

