

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF ST. PAUL

In the Matter of the Second Hand  
Dealer-Motor Vehicle License  
Application of Mao Dong, d/b/a Como  
Avenue Auto Sales, for the Premises  
Located at 509 Como Avenue in St.  
Paul.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on June 8, 2005, at the City Hall/Courthouse, Room 41, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102. The OAH record closed at the conclusion of the hearing.

Rachel Gunderson, Assistant City Attorney, and Virginia Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102, appeared on behalf of the St. Paul Office of License, Inspections and Environmental Protection (LIEP).

Mao Dong (Applicant), 4385 Rosebriar Avenue, Vadnais Heights, MN 55127, appeared on his own behalf without counsel.

Kerry Antrim, Community Organizer, District 6 Planning Council, 213 Front Avenue, St. Paul, MN 55117, appeared for the District 6 Planning Council.

**NOTICE**

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and this Report. The Council shall not consider any factual testimony not previously submitted to and considered by the Administrative Law Judge. After receipt of this Report, the Council shall provide the applicant an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or interpretation of the facts, and to present argument related to the recommended adverse action. Upon conclusion of that hearing, and after consideration of the record, this Report, and such additional arguments presented at the hearing, the Council shall determine what, if any, adverse action shall be taken, which action shall be by resolution. The Council may accept, reject or modify the Findings of Fact, Conclusions, and Recommendations contained in this Report.<sup>[1]</sup>

## ISSUE

Should the City grant the second hand dealer-motor vehicle license application of Mao Dong, doing business as Como Avenue Auto Sales?

The Administrative Law Judge concludes the license application should be granted.

Based upon the record herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Background Facts

1. This matter involves property at 509 Como Avenue in St. Paul. The property is zoned I-1. Second-hand automobile sales are a permitted use in the I-1 classification.<sup>[2]</sup>

2. The property is a 35,000 sq-ft parcel consisting of a large paved parking lot with several pole buildings. In the past there was a gas station at this location, which contaminated the soil. The property is unsuitable for further building or development without costly expense to restore the soil.<sup>[3]</sup>

3. In November 2003 Dave Junglen and Pat Snyder purchased the property from Coates RV Sales, which had used the site to store, display, and sell trailers and recreational vehicles. Junglen and Snyder operate their business, Crosstown Mechanical, from a warehouse on the property. They do not use much of the paved parking area. They need the income from leasing the property to help pay the substantial real estate taxes (in the area of \$20,000) while their business becomes established. They leased a portion of the property to Mao Dong under a one-year renewable lease for the purpose of operating a second-hand auto sales lot.

### The License Application

4. On December 6, 2004, Mao Dong applied for a Second Hand Dealer-Motor Vehicle License for the premises located at 509 Como Avenue.<sup>[4]</sup>

5. LIEP recommended approval of the license subject to 11 conditions, one of which is that the number of vehicles displayed outdoors may not exceed 28, with an additional four spaces for customers and employees. The Applicant agreed to these conditions.<sup>[5]</sup>

6. The application was reviewed and approved by all the appropriate divisions and departments of the City.<sup>[6]</sup>

7. LIEP sent notice to residents within 300 feet of the proposed business, and to the community organization for the area, District 6 Planning Council, as required by the St. Paul Legislative Code.<sup>[7]</sup>

8. The District 6 Planning Council objected to the issuance of the license on the basis that too many auto-related businesses were located in the area and that approval would discourage the Planning Council's goal in its Large Area Plan of diversifying the types of businesses in the area.<sup>[8]</sup>

9. The District 7 Planning Council objected to issuance of the license on the basis that the business was inconsistent with the goals of a multi-neighborhood revitalization effort and the Great Northern Corridor Project.<sup>[9]</sup>

10. Sparc, a nonprofit community organization working to increase affordable housing and support small business in the area, objected to issuance of the license on the basis that a second hand motor vehicle dealer land use is inconsistent with the vision for the Great Northern Corridor, the District 7 Large Area Plan, and the Como-Dale Small Area Plan.<sup>[10]</sup>

11. The Great Northern Corridor, a neighborhood organization, objected to the issuance of the license based on its view that the business is inconsistent with the goals of the Great Northern Corridor Project.<sup>[11]</sup>

12. At the hearing before the Legislative Hearing Officer held pursuant to St. Paul Legislative Code §310.05, the LIEP inspector recommended issuance of the license with 11 conditions. At the hearing, the applicant agreed to add another condition, calling for review of license conditions in six months as opposed to the annual review required by ordinance.<sup>[12]</sup>

13. The Legislative Hearing Officer sent the matter to the St. Paul City Council with a recommendation that the license be issued with the conditions. At the Council hearing, the matter was referred to an Administrative Law Judge to take evidence and consider arguments that the proposed business is inconsistent with the Large Area Plan and is not the best use of the property.<sup>[13]</sup>

14. On June 1, 2005, the Office of LIEP issued a Notice of Administrative Hearing, setting the hearing date in this matter for June 8, 2005.

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

### **CONCLUSIONS**

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this case.<sup>[14]</sup>

2. The Applicant received timely and proper notice of the hearing, and the City has complied with all relevant procedural requirements of statute and rule.<sup>[15]</sup>

3. The City has authority to grant a license and to impose certain conditions on that license.<sup>[16]</sup>

4. The sale of used automobiles requires a license from LIEP.<sup>[17]</sup> The applicants have met all the requirements for this license.

5. No new license shall be granted by LIEP without full compliance with the requirements of the St. Paul Zoning Code.<sup>[18]</sup>

7. Under the St. Paul Zoning Code, second hand auto sales are a permitted use in the I-1 zoning classification. The license is in full compliance with the requirements of the St. Paul Zoning Code.

8. Where the application for the grant of a Class N license meets all the requirements of law, and where there exists no ground for adverse action, the director shall issue such license in accordance with law.<sup>[19]</sup>

9. The Applicant has shown by a preponderance of the evidence that it has met the requirements for a second-hand dealer motor vehicle license and is in compliance with the zoning code.

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the application of Mao Dong, d/b/a Como Avenue Auto Sales, for a second hand dealer-motor vehicle license be GRANTED subject to the conditions recommended by LIEP.

June 16, 2005

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape-recorded (one tape, not transcribed)

### **MEMORANDUM**

The District 6 Planning Council acknowledges that the Applicant is in compliance with zoning ordinances and meets all other licensing requirements. The Council representative stated that her goal in this process was to urge consideration of the Large Area Plan and the potential for development of the property in a manner

consistent with the Plan. The law requires, however, that the license be issued if licensing requirements are met and the applicant is in compliance with the zoning code.

Furthermore, issuing a license to this Applicant is not inconsistent with consideration of the long-term goals in the Large Area Plan. No one is currently seeking to restore and develop the property in a different manner. The Applicant is not intending to construct any buildings on the site, and he is not envisioning a long-term operation there. He has a one-year lease. His business is, by its nature, portable; it could easily be relocated if that became necessary in the future. The Plan requires no further consideration in a licensing matter. The owner must be allowed to lease the property, and a license must be issued to a qualified applicant for a specifically permitted use.

The owner indicated at the hearing that he was not opposed to measures to beautify the site with landscaping, but that he lacked the funds to make such improvements now. He did indicate that if the license were issued, he would remove the barbed wire at the top of the fence to satisfy aesthetic concerns. This could be added as an additional condition on the license.

K.D.S.

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<sup>[1]</sup> St. Paul Legislative Code § 310.05 (c-1).

<sup>[2]</sup> Ex. A at 2.

<sup>[3]</sup> Testimony of David Junglen.

<sup>[4]</sup> Ex. 1.

<sup>[5]</sup> Ex. 7; Testimony of Jeffrey Hawkins.

<sup>[6]</sup> Ex. 7.

<sup>[7]</sup> Ex. A at 1.

<sup>[8]</sup> Ex. A at 1; Ex. 2.

<sup>[9]</sup> Ex. A at 1; Ex. 3.

<sup>[10]</sup> Ex. A at 1; Ex. 4.

<sup>[11]</sup> Ex. A at 1; Ex. 5.

<sup>[12]</sup> Exs. 7 & 8.

<sup>[13]</sup> Ex. A at 2; Ex. 9. *See also* Notice of Administrative Hearing, June 1, 2005.

<sup>[14]</sup> St. Paul Legislative Code § 310.05.

<sup>[15]</sup> *Id.*

<sup>[16]</sup> *Id.* §§ 310.04 and 310.06.

<sup>[17]</sup> *Id.* § 401.01(a).

<sup>[18]</sup> *Id.* § 310.03.

<sup>[19]</sup> *Id.* § 310.04(d)(1).