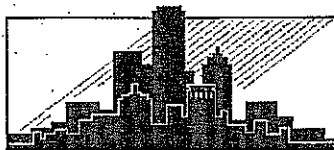


WEINBLATT & GAYLORD PLC
ATTORNEYS & COUNSELORS AT LAW

Suite 300 Kellogg Square
111 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (651) 292-8770
Fax: (651) 223-8282
Website: www.weglaw.com



Alan W. Weinblatt
Kathleen A. Gaylord
Jay Benanav
Jane L. Prince

Katharina E. Liston
Of Counsel

September 21, 2011

TO: City Council President Kathy Lantry
City Councilmember Dave Thune
City Councilmember Melvin Carter
City Councilmember Pat Harris
City Councilmember Russ Stark
City Councilmember Lee Helgen
City Councilmember Dan Bostrom

FR: Jane Prince, Attorney for Sandy's Professional Dog & Cat Grooming

RE: License Application Denial for Sandy's, RES PH 11-1071

The Department of Safety and Inspection recommends denial of Ms. Sandra Belisle's application for an Animal Boarding license because **one of Ms. Belisle's neighbors** will not sign the required neighborhood consent petition. She has received neighborhood consent from 66, not 75 percent of her residential neighbors.

It must be noted that Ms. Belisle is ready to meet all the remaining requirements of the Animal Boarding license, once she has resolved this pivotal matter. Note that DSI submissions for today's hearing state, "There are a number of other items which have not been provided **but are not necessary unless a license is issued** and the business is legally able to operate."

FACT SUMMARY

No facts are in dispute between my client and DSI. Ms. Belisle has owned and operated her pet grooming and boarding business for 35 years. Ms. Belisle also holds a City of Saint Paul Pet Shop License, under Chapter 347. Ms. Belisle employs seven staff people who are groomers and animal attendants. Continuing to board pets is an essential element of Ms. Belisle's business plan.

In 2006, Ms. Belisle purchased her current building at 360 Clifton, continuing a nonconforming use where a beauty salon earlier was operated. Ms. Belisle's shop is in an R-4 zone, adjacent to the north to on-sale liquor establishment in a B-2 zone, adjacent to the west to a public school playground, and in close proximity to the Victoria I-35E on-ramp.

In 2008, the City of Saint Paul created the Chapter 348 Animal Boarding license. Ms. Belisle did not become aware of this until a disgruntled former employee she had terminated made a complaint to the City concerning the business. It should be noted that this is **the only complaint** about Ms. Belisle's business in the City's on-line property information and code enforcement records. Fire and Animal Control inspectors responding to the complaint found no violations whatsoever.

None of the three residential neighbors who refuse to sign her license petition have registered a complaint with the City of any code violations at her business.

As soon as Ms. Belisle learned that the Animal Boarding license was required, she cooperated with the DSI staff to secure the license. She was wrongly advised by zoning staff that she would need to seek rezoning to Industrial, to get this license, and she circulated the necessary rezoning petition to her neighbors, most of whom, remarkably, were willing to sign in support.

Three of her neighbors refused to sign the rezoning petition; they are the same neighbors who now refuse to sign her consent petition to receive her license. It is likely that the misunderstanding about rezoning poisoned these neighbors' attitudes about this business.

Once Ms. Belisle hired legal counsel, she was able to resolve the zoning matter, and was granted zoning approval to operate a grooming and boarding license at 360 Clifton in November 2011.

Since that time, she, her attorney, a paid lobbyist, and a supportive neighbor have approached the three neighbors who will not sign the petition of consent. Two of these neighbors refuse to talk to *anyone* about this issue. The remaining homeowner has stated several times, "I do not want to hurt this business, but I am not interested in signing anything."

To secure the Animal Boarding license, Ms. Belisle has to improve her parking area, pass an inspection by Animal Control, and submit her business plan. She is prepared to do all of these things, but has spent her time and effort attempting to meet the consent petition.

Again, DSI states: "There are a number of other items which have not been provided but are not necessary unless a license is issued and the business is legally able to operate."

ANALYSIS

Class R Licenses

The Animal Boarding License is a Class R business license. It is the only Saint Paul Class R business license according to our research, which requires a neighborhood consent petition. The pet grooming, pet shop and veterinary business licenses, which also involve the keeping of animals, do not require a neighborhood consent petition.

Class N Licenses

It is material in this matter that Class N licenses, including such uses as pool hall, bingo hall, cabaret, firearms dealer, gas station, infectious waste processing, and pawn shop, do not require a neighborhood consent petition. Instead, Class N licenses require written notification to the affected neighborhood organizations, and upon their request there must be a public hearing. Nonetheless, that public hearing – and even violent neighborhood opposition – is only advisory to the City Council. If the license applicant meets all the requirements of law, the license must be granted.

One exception to this is Chapter 409, Intoxicating Liquor License, which is a Class N license. In this case, the applicant needs to produce a neighborhood consent petition of 90 percent of its residential neighbors. However, if the applicant can get only 60 percent of the necessary signatures, the City Council has discretion to award the license, with certain assurances from the applicant. If the applicant receives less than 60 percent neighbor support, the City Council can also issue the license, again with additional promises from the applicant.

It is interesting to review City Council actions pertaining to Liquor License awards. Though Chapter 409 is a Class N license, the City Council can waive the 45-day neighborhood notice and issue the license in advance of the neighborhood's request for a public hearing.

Note that when the City Council waives this required notice, it is because, "failure to grant the waiver and the consequent delay in approving the license **would cause exceptional and unusual hardship to the license applicant.**"

Let there be no doubt: Failure to allow Ms. Belisle to board animals at her business will **severely curtail her business and the jobs of her seven employees.**

LEGAL ANALYSIS

On the basis of the above analysis of widely varied requirements for businesses that have considerably more impact on the health, safety, morals and general welfare of the community, it appears that the City's nondiscretionary denial of an Animal Boarding license application in this case would be arbitrary.

Further, denial of the license application on the basis of an incomplete neighborhood consent petition is an illegal delegation of the City's licensing authority to a single disinterested neighbor.

PROPOSAL

On behalf of my client, we request that City Council consider granting the license, under the same discretionary powers it holds under Chapter 409.06 (g)(2)(b).

This provision allows the City Council to grant the license with 60 percent of the signatures of surrounding residential neighbors, "if the licensee demonstrates to the council in writing with respect to specific properties that a good faith effort was made to fulfill all petition requirements, and upon finding that issuance of the license would not interfere with the reasonable use and enjoyment of neighboring property and residences and would not bear adversely on the health, safety, morals and general welfare of the community."

In fact, if such a willingness exists, we will provide this letter at today's public hearing.