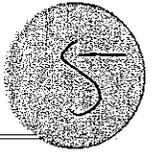


No. A08-1697



State of Minnesota
In Supreme Court

Pawn America Minnesota, LLC,
a Minnesota limited liability company,

Appellant,

vs.

City of St. Louis Park, Minnesota,

Respondent.

**BRIEF AND ADDENDUM OF APPELLANT
PAWN AMERICA MINNESOTA, LLC**

Thomas M. Scott, Esq. (#98498)
CAMPBELL KNUTSON
1380 Corporate Center Curve
317 Eagandale Office Center
Eagan, Minnesota 55121
Phone: (651) 452-5000

*Counsel for Respondent
City of St. Louis Park, Minnesota*

Susan L. Naughton, Esq. (#259743)
145 University Avenue West
St. Paul, MN 55103-2044
Phone: (651) 281-1232

*Counsel for Amicus Curiae
League of Minnesota Cities*

Scott G. Harris (#0132408)
Matthew B. Seltzer, Esq. (#0130874)
Aleava R. Sayre (#0386491)
LEONARD, STREET AND DEINARD
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Phone: (612) 335-1500

Eileen M. Roberts, Esq. (#0092174)
875 Summit Avenue
St. Paul, Minnesota 55105
Phone: (651) 290-6420

*Counsel for Appellant
Pawn America Minnesota, LLC*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

- I. Did the Court of Appeals err by affirming the validity of an interim ordinance that does not comply with Minn. Stat. § 462.355, subd. 4(a), because it was not adopted before any planning process was commenced and it was not adopted with the purpose of protecting the planning process?

The Court of Appeals affirmed the district court's conclusion that the interim ordinance was valid.

Apposite Authorities

Minn. Stat. § 462.355, subd. 4(a)

- II. Did the Court of Appeals err by affirming the validity of an interim ordinance when the undisputed facts establish that the City did not adopt the interim ordinance in good faith and instead adopted it to delay or prevent a single business from obtaining a pawnbroker license?

The Court of Appeals affirmed the district court's conclusion that the interim ordinance was valid.

Apposite Authorities

Minn. Stat. § 462.355, subd. 4(a)

Almquist v. Town of Marshan, 308 Minn. 52, 245 N.W.2d 819 (1976)

Medical Services, Inc. v. City of Savage, 487 N.W.2d 263 (Minn. App. 1992)

- III. Did the Court of Appeals err by concluding that the City was not required to issue a pawnbroker license when the City's unlawful interim ordinance prevented the issuance of the license?

The Court of Appeals affirmed the district court's conclusion that the City was not required to issue a pawnbroker license.

Apposite Authorities

Minn. Stat. § 462.355, subd. 4(a)

Alexander v. City of Minneapolis, 267 Minn. 155, 125 N.W.2d 583 (1963)

Medical Services, Inc. v. City of Savage, 487 N.W.2d 263 (Minn. App. 1992)

STATEMENT OF THE CASE

Pawn America Minnesota, LLC (“Pawn America”) appeals from the August 11, 2009, decision of the Minnesota Court of Appeals. That decision affirmed the Hennepin County District Court judgment entered on August 4, 2008, pursuant to Judge Denise D. Reilly’s August 1, 2008 Order on Cross-Motions for Summary Judgment.

On June 7, 2007, Pawn America applied to the City of St. Louis Park (“City”) for a pawnbroker license to operate a pawn store at 5600 Excelsior Boulevard (the “Property”). The City repeatedly assured Pawn America that the proposed pawn store complied with the City’s zoning ordinance and that Pawn America would receive a pawnbroker’s license when it took title to the Property. Relying on these assurances, Pawn America (through its affiliated company) executed a purchase agreement for the Property, conducted due diligence, and waived contingencies under the purchase agreement.

About one month before the scheduled October 31, 2007, closing for the purchase of the Property, some nearby residents complained to the City Council about the planned pawn store. In response, the City abruptly changed course and developed a strategy to stop the proposed pawn store, as reflected by the Mayor’s statement at the ensuing City Council meeting: *“Here’s my policy statement on it: Figure out a way to say ‘no.’”* (emphasis added). In accordance with the Mayor’s instructions, the City found a way to say “no” by stopping the processing of the license application and rushing to impose a moratorium on pawn stores effective October 26, 2007, five days before the scheduled

closing for Pawn America's purchase of the Property. The City later permanently amended its zoning ordinance to prohibit any pawn store at the Property.

In the subsequent litigation, the parties filed cross-motions for summary judgment. The district court denied Pawn America's motion and entered judgment in favor of the City on August 4, 2008, on grounds that the interim ordinance was valid and that the permanent ordinance prohibited a pawn store at the Property.

Pawn America appealed to the Court of Appeals. In a 2-1 decision, the Court of Appeals affirmed, concluding that the City may adopt an interim ordinance if it authorizes a planning study at the same time that it adopts the ordinance. The dissent, however, properly recognized that the City engaged in "political manipulations" that began "long after Pawn America had justifiably and detrimentally relied on the city's preliminary approvals." Noting that the "record is replete with quotes from the city's Mayor and council members admitting that they would use any means, including an interim 'study' ordinance, to stop the Pawn America project," the dissent concluded that the City acted arbitrarily by engaging in "*open and obvious discrimination against a complying 'single project.'*" (emphasis added).

On October 28, 2009, this Court granted Pawn America's Petition for Review.

STATEMENT OF FACTS

The undisputed facts in this case demonstrate that the City engaged in a deliberate course of conduct for the specific purpose of preventing one particular business, Pawn America, from operating at the Property. This course of conduct included an unlawful freeze on the processing of Pawn America's license application and a calculated

manipulation of the procedural requirements for an interim ordinance. The City's conduct culminated with an interim ordinance that targeted Pawn America and an amendment of the zoning ordinance to preclude a pawn store at the Property.

Only One Pawnbroker License Is Available in St. Louis Park

By ordinance, St. Louis Park permits only two pawnbroker licenses. St. Louis Park City Code § 8-427(a) (2007) . As City Manager Tom Harmening acknowledged, the City “took a pretty good look” in 2002 at the operation of pawn stores in St. Louis Park, reduced the number of authorized pawnbroker license from three to two, and implemented a number of new requirements. (Appellant’s Appendix (“A.”) 081.) One of the two available licenses has been held for years by Excel Pawn, which is currently located at 8008 Minnetonka Boulevard, a residential neighborhood in St. Louis Park. (A.060.) Thus, only one pawnbroker license remains available.

Pawn America Applies for the Only Available Pawnbroker License and Executes the Purchase Agreement for the Property

On June 7, 2007, Pawn America met with the City’s Assistant Zoning Administrator, Inspections Supervisor, and City Clerk to discuss licensing and zoning matters. (A.108.) Each of these senior representatives of the City confirmed to Pawn America that a pawn store was permitted at the Property. (*Id.*) Pawn America therefore submitted its application for the City’s one available pawnbroker license, and the City issued a zoning verification letter, confirming that “the intended use of the Project as a pawn store, secondhand goods store, precious metals dealer and an industrial loan and

thrift company complies with the zoning code and other applicable city ordinances.”

(A.108, A.127.)

On the same day, PAL Holdings, LLC (a company wholly owned by Pawn America) entered into an agreement to purchase the Property, which is zoned C-2. (A.107, A.111-A.123, A.125.) At all relevant times until February 22, 2008, pawn stores were a permitted use in the C-2 district. St. Louis Park City Code § 36-194(b)(17) (2007). Pawn America’s purchase of the Property was scheduled to close on October 31, 2007. (A.113.)

The purchase agreement provided that its “government approvals” contingency would expire July 16, 2007, at which point \$7,500 of the earnest money would become non-refundable and PAL Holdings would be obligated to purchase the Property. (A.108, A.112.) Therefore, on Friday, July 13, 2007, Pawn America’s attorney placed a call to Ann Boettcher, the City’s Inspections Supervisor, to advise her of the July 16 deadline and to inquire regarding the status of the pawnbroker license application. (A.108, A.131.) Responding by voicemail and e-mail on Monday, July 16, Boettcher advised Pawn America that there were no impediments to license issuance and that the City would issue the license as soon as Pawn America either had a lease for the Property or owned the Property. (A.131, A.133.) Specifically, in her July 16 voicemail message, Boettcher stated:

There’s not going to be a problem issuing that license. It’s just that I can’t issue a license to someone who doesn’t have either a signed lease or the property in their name. As soon as that’s taken care of, if you let me know when you’ll be opening, the license will be issued to the company and we are good to go.

(A.133 (emphasis added).) Relying on the City's representation that Pawn America would obtain the license upon closing on the Property, Pawn America waived the government approvals contingency and proceeded toward closing.

Neighbors Object to a Pawn America Store

On or about Friday, September 21, 2007, nearby residents learned that the Property would become a Pawn America store. Over the weekend, certain residents contacted City Councilmember John Basill, who represents that ward, and told him that they opposed having a pawn store in their neighborhood. (A.062-A.065.) In response, on Sunday, September 23, Councilmember Basill wrote City Manager Tom Harmening the following message:

[T]his will not be welcome and will not serve our community image well as you exit highway 100 to go to [E]xcelsior and Grand. We should expect a lot of noise if this is true. Are not our limits on this maxed? *If not, let's lower the number allowable asap.*

(A.070 (emphasis added).)

City Develops Plan to Prevent Issuance of Pawnbroker License to Pawn America

The next day, September 24, 2007, City personnel exchanged numerous e-mails regarding Pawn America and the status of its application for a pawnbroker license. These e-mails included the following:

- Community Development Director Kevin Locke wrote Inspections Supervisor Boettcher: "Rumor has it that Pawn America is looking at

purchase of the building [referring to the Trestman Music building at the Property].” (A.076.)

- Inspections Supervisor Boettcher replied that Pawn America had applied for a pawnbroker license, that the license could be issued after Pawn America closed on October 31 and took possession of the Property, and that Zoning Director Gary Morrison had signed a zoning verification letter. (A.076.)

- City Manager Harmening wrote:

I need to know as soon as possible what we wrote to Pawn America in terms of a zoning letter from Gary. Kirk/John [a reference to members of the St. Louis Park Police Department] – have we completed a background check on this one? And lastly – to clarify – we have or have not issued a license at this point in time.

(A.075.)

- Inspections Supervisor Boettcher replied that the City had not yet issued the pawnbroker license because Pawn America would not be taking possession of the Property until October 31, 2007. (A.076.)
- City Manager Harmening then stated: “*If we could hold off on signing or approving anything further, that would be appreciated.*” (A.073 (emphasis added).)
- In response, Inspections Supervisor Boettcher indicated: “We will.” (*Id.*)

The same day, the City began developing a plan to prevent issuance of a pawnbroker license for the Property. At the outset, Community Development Director Locke checked with legal counsel to determine whether the City could reduce the number of licenses from two to one and learned that it could not. (A.078.)

On the evening of Monday, September 24, 2007, the City Council held a regularly scheduled study session. Although Pawn America's application for a pawnbroker license was *not* on the agenda, City Manager Harmening raised the application at the end of the meeting, stating:

We have been notified that a pawnshop, Pawn America, is proposing to move into Trestman Music at Highway 100 and Excelsior Boulevard.

.....

So John [Basill] has been hearing quite a bit of chatter out in the community, particularly in that area, about concerns with a pawnshop locating in that building, and inquired as to whether we could do anything about that.

(A.081.)

In response, Mayor Jeff Jacobs stated: "*Here's my policy statement on it: Figure out a way to say 'no.'*" (*Id.* (emphasis added).) Consistent with this directive, the City Council began exploring possible means for rejecting the application.

Initially, Councilmember Basill inquired as to whether the City could simply reduce the number of allowable licenses to zero. (A.082.) The City Attorney confirmed that this approach was not possible. (*Id.*) The City Attorney then proposed another possibility for preventing the issuance of the pawnbroker license. (A.083.) He said that the City Council could consider imposing an interim moratorium on new pawn stores and evaluate amending the zoning code to place additional restrictions on pawn stores. (*Id.*) The next day, Tuesday, September 25, 2007, the City prepared an announcement that the City Council was considering an interim ordinance to study pawn store zoning and would not issue any pawnbroker licenses while the interim ordinance was in effect. (A.085.) Significantly, Pawn America was the *only* business affected by this moratorium.

After the City decided to introduce the interim ordinance and declare a moratorium on the issuance of pawnbroker licenses, Councilmember Basill sent an e-mail to City Manager Harmening on September 28, 2007, forwarding a link to a story about Minneapolis and St. Paul initiating moratoria and zoning changes in response to Pawn America's announcement of plans to open stores in those cities. He stated that, "[i]f Minneapolis can win the legal battle may be we can to [sic].)" (A.089.) Three days later, on October 1, 2007, Communications Coordinator Jamie Zwilling e-mailed City Manager Harmening inquiring as to whether "there are legal concerns . . . in acknowledging that the interim ordinance is related to a specific application" and stating: "I would appreciate your guidance on this one with regards to how we handle the question about what brought this on. *It will be very clear soon that it was this particular application that brought this to the forefront.*" (A.091 (emphasis added).)

Even Before Adopting the Interim Ordinance, the City Stopped Work on Pawn America's Application

On September 24, 2007, before the City even proposed the interim ordinance, the City stopped processing Pawn America's application. (A.073.) When the City Council adopted the first reading of the interim ordinance on Monday, October 1, 2007, the City Council affirmatively directed City staff to "immediately stop the further processing and approval of any pending or new applications for a pawnshop license." (A.109, A.141.) Again, the only pending application for a pawnbroker license was that of Pawn America.

City Accelerates and Manipulates the Procedural Requirements for Interim Ordinance

The St. Louis Park City Charter requires that a proposed ordinance receive two readings at least seven days apart, and that the ordinance be published in the City's official newspaper. St. Louis Park City Charter, §§ 3.05, .07. An ordinance only becomes effective 15 days after it has been published. *Id.* § 3.08.

The City, however, manipulated this process to accelerate the effective date of the interim ordinance. The City took steps to reduce the amount of time between the first reading and the ordinance's effective date.

First, the City Council scheduled a special meeting for the sole purpose of having the second reading of the ordinance. (A.093.) The adoption of the first reading of the interim ordinance took place on October 1, 2007, and at that meeting the council voted to have a special meeting on October 8 for the second reading. (A.141.) In a September 28 e-mail to City Council members, City Manager Harmening explained, "[t]his approach is being proposed to meet certain scheduling considerations." (A.093.) Official minutes of the October 8 special meeting show that the second reading of the interim ordinance was the *only* agenda item. (A.095.)

Second, the City sent the interim ordinance to the official City newspaper for publication *before* its second reading. The City's official newspaper, the Sun Sailor, is published every Thursday and requires legal notices to be submitted the preceding Thursday. (A.097.) Even though the second reading of the interim ordinance did not occur until Monday, October 8, the City sent it to the Sun Sailor on Wednesday,

October 3. (A.099.) This strategy – intended to render the interim ordinance effective before the scheduled closing on the Property rather than after – was laid out in a September 26 e-mail from Planning and Zoning Supervisor Meg McMonigal to City Clerk Nancy Stroth:

“We are planning to ‘pre’ publish the Interim Ordinance as follows:

1st reading – Oct 1
Notice to paper Oct 3
2nd reading – Oct 8
Publish – Oct 11
Effective date – Oct 26”

(*Id.* (emphasis in original.))

If the City had, rather than “pre-publishing” the interim ordinance, sent the ordinance to the newspaper after its second reading, it would have been published on Thursday, October 18, and would not have become effective until November 2 – after the scheduled October 31 closing on the Property.

Pawn America Leases Property, Requests Issuance of License, and Commences Litigation to Enforce Its Rights

Pawn America learned on Wednesday, September 26 that the City was considering an interim ordinance on pawn stores. (A.108.) Because the City had previously assured Pawn America that the pawnbroker license would be issued as soon as Pawn America had a lease or title to the Property, PAL Holdings and Pawn America decided to obtain possession of the Property before the scheduled October 31 closing. (A.109.) On Thursday, September 27, PAL Holdings obtained a lease for the Property, and subleased the Property to Pawn America that same day. (*Id.*) On Friday, September 28 (before the City introduced the interim ordinance), Pawn America demanded issuance of the

pawnbroker license based on its lease of the Property. (*Id.*) The City, however, departed from its original position and refused to issue the license for two purported reasons: (1) the anticipated pawn store moratorium and (2) the St. Louis Park Police Department's delay in completing a background check. (*Id.*)

Pawn America therefore commenced this action on October 4, 2007. (A.201-A.327.) On the same day, the district court issued its Alternative Writ of Mandamus, requiring the City to immediately issue the pawnbroker license or show cause why it should not be issued. On October 8, 2007, the district court denied Pawn America's request for the issuance of a peremptory writ of mandamus. (Transcripts of Proceedings ("Tr.") 36.) Nonetheless, the district court ordered the City to continue processing the background check for Pawn America. (Tr. 36, 38.)

In response to the City Council's second reading of the interim ordinance on October 8, 2007, Pawn America amended its pleading to seek declaratory and injunctive relief in addition to a writ of mandamus. (A.175-A.200.) In Pawn America's motion for a temporary restraining order, Pawn America asked the district court to restrain enforcement of both the interim ordinance and the City Council's resolution directing City staff to stop processing Pawn America's application. On October 22, 2007, the district court denied Pawn America's motion for a temporary restraining order.

City Continues to Impede the Application by Delaying the Background Check

The City's code requires that an application for a pawnbroker license be referred to the police department for verification and investigation of the facts in the application. St. Louis Park City Code, § 8-425(b) (2007) . Although City Inspections Supervisor

Boettcher should have ordered the background check when Pawn America submitted its application in June, she neglected to order a background check, claiming she was unaware of the requirement. (A.102.) She said that when she learned of the requirement on September 24, 2007, she sent a memorandum to the St. Louis Park Police Department requesting that a background check be completed by October 12, 2007 – 18 days later. (A.102, A.105.) The police department, however, waited until October 9, 2007, the date of the court order requiring the processing of Pawn America’s license application, to even assign an officer to perform the background check. (A.106.) This two-week delay was further compounded by additional delays in completing the background check. Despite the police chief’s estimate in an October 9 e-mail that it would take two to four weeks to complete the Pawn America background check, the City’s police department did not actually complete the Pawn America background check until mid-December 2007 – more than eight weeks later. (A.104, A.106.) Ultimately, the police found no reason to deny issuance of a pawnbroker license to Pawn America. (A.103-A.104.)

Closing on Purchase of the Property is Delayed

As a result of the City’s refusal to issue a pawnbroker license to Pawn America, the closing on the purchase of the Property, which was scheduled for October 31, 2007, was delayed by months. (A.109.) Having waived the contingencies under the purchase agreement and being concerned about potential claims for specific performance, Pawn America (through its affiliated company) closed on the Property on January 7, 2008. (Id.)

City Amends Its Ordinance and Prohibits Pawn Stores at the Property

Effective February 22, 2008, while this action was pending in the district court, the City amended its zoning code to limit the location and operation of pawn stores. The amendments, which are codified at St. Louis Park City Code § 36-194(d)(16) (2008), reclassified pawn stores from a permitted use to a conditional use in C-2 districts. The amendments also added twelve conditions, including the requirement that a pawn store be at least 350 feet away from the lot line of any parcel zoned for residential use. (Affidavit of Thomas M. Scott dated April 18, 2008 (“Scott Aff.”), Ex. A.) The Property is less than 350 feet away from property zoned for residential use. (Scott Aff. ¶ 3.) Therefore, as amended, the City’s zoning code now prohibits Pawn America from operating a pawn store at the Property.

District Court Grants Summary Judgment for the City and Pawn America Appeals

The parties argued cross-motions for summary judgment before the district court on May 19, 2008. (A.039-A.056.) In its order filed August 1, 2008, the district court denied Pawn America’s motion and granted the City’s motion, determining that the applicable caselaw did not “compel the conclusion that the Interim Ordinance is invalid.” (A.037.) Judgment was entered on August 4, 2008, and Pawn America appealed to the Minnesota Court of Appeals. (A.028, A.328-A.329.)

Court of Appeals Affirms District Court’s Judgment

In a 2-1 decision issued on August 11, 2009, the Court of Appeals affirmed, concluding that the interim ordinance was lawful because the City “authorized the study process *at the same time it adopted* the interim ordinance” even though the City admitted

that the interim ordinance was targeted at Pawn America. *Pawn America Minnesota, LLC, v. City of St. Louis Park*, A08-1697, 2009 WL 2447746, at *4 (Minn. App. Aug. 11, 2009) (emphasis added). In the dissent, Judge Stauber observed that the record established that the City engaged in “political manipulations” that began “long after Pawn America had justifiably and detrimentally relied on the city’s preliminary approvals.” *Id.* at *6 (Stauber, J., dissenting). Indeed, Judge Stauber noted that the “record is replete with quotes from the city’s Mayor and council members admitting that they would use any means, including an interim ‘study’ ordinance, to stop the Pawn America project.” *Id.* The dissent therefore concluded that the City acted arbitrarily by engaging in “*open and obvious discrimination against a complying ‘single project.’*” (emphasis added). *Id.* at *7 (Stauber, J., dissenting).

On September 9, 2009, Pawn America filed its Petition for Review with the Minnesota Supreme Court, seeking review of the Court of Appeals’ conclusion that the interim moratorium on new pawn stores was valid and that the City was not required to issue a pawnbroker license to Pawn America. (A.015-A.020.) On October 28, 2009, the this Court granted Pawn America’s Petition for Review and also granted the City’s request for cross-review. (A.027.)

STANDARD OF REVIEW

On appeal from summary judgment, the Supreme Court must address two issues: (1) whether any genuine issues of material fact exist, and (2) whether the district court or Court of Appeals erred in the application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). “On appeal, the reviewing court must view the evidence in

the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). The Minnesota Supreme Court reviews issues of law *de novo* and need not defer to the district court’s rulings on the application of law to facts. *See Bondy v. Allen*, 635 N.W.2d 244, 249 (Minn. App. 2001). Nor is the Supreme Court bound by the decision of the Court of Appeals on a question of law. *Anderson-Johanningmeier v. Mid-Minnesota Women’s Center, Inc.*, 637 N.W.2d 270, 276 (Minn. 2002); *McClain v. Begley*, 465 N.W.2d 680, 682 (Minn. 1991).

Similarly, the question of whether an ordinance complies with the statutory authority granted by the legislature to municipalities is a question of law. *See U.S. West Commc’ns, Inc. v. City of Redwood Falls*, 558 N.W.2d 512, 515 (Minn. App. 1997) (applying *de novo* review to district court’s determination that city had statutory authority to enact and enforce an ordinance because the issue is a question of law). Because the statutory validity of the interim ordinance is an issue of law, this Court reviews the issue *de novo*, without deference to either the City or the courts below. *See id*; *see also Duncanson v. Bd. of Supervisors of Danville Township*, 551 N.W.2d 248, 249 (Minn. App. 1996) (reviewing *de novo* question of whether an interim zoning ordinance complies with a state statute).

ARGUMENT

I. THE COURT OF APPEALS ERRED BY AFFIRMING THE DISTRICT COURT’S DECISION BECAUSE THE PLAIN LANGUAGE OF MINN. STAT. § 462.355 ESTABLISHES THAT THE INTERIM ORDINANCE IS INVALID.

The applicable Minnesota statute accords municipalities the limited authority to adopt an interim ordinance only when specific requirements are satisfied. Minn. Stat.

§ 462.355, subd. 4(a). Minnesota Statutes Section 462.355, subdivision 4(a), provides in its entirety as follows:

If a municipality *is conducting* studies or *has authorized* a study to be conducted or *has held* or *has scheduled* a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls as defined in section 462.352, subdivision 15, or if new territory for which plans or controls have not been adopted is annexed to a municipality, the governing body of the municipality *may adopt* an interim ordinance applicable to all or part of its jurisdiction *for the purpose of protecting the planning process* and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

Minn. Stat. § 462.355, subd. 4(a) (emphasis added). The statute provides that a city council, as the governing body of the municipality, may adopt an interim ordinance only when two primary requirements are satisfied: (1) a planning study had already been authorized for the specific purpose of possibly establishing or changing a comprehensive plan or official controls; and (2) the interim ordinance is adopted “for the purpose of protecting the planning process.” The undisputed facts of this case establish that the City failed to satisfy either requirement and that the interim ordinance is therefore invalid.

A. The Interim Ordinance Violates Minn. Stat. § 462.355 Because the Unambiguous Statutory Language Requires that Any Planning Study Be Commenced Before the Adoption of an Interim Ordinance.

The plain language of the statute unambiguously requires that a municipality commence the requisite planning process *before* its governing body may adopt any interim ordinance to protect such planning process. More specifically, the governing body may adopt an interim ordinance if:

1. The municipality “*is conducting* studies”;

2. The municipality “*has authorized* a study to be conducted”; or
3. The municipality “*has held* or *has scheduled* a hearing.”

Minn. Stat. § 462.355, subd. 4(a) (emphasis added). Despite this unambiguous language, which requires that a study be commenced, or at least authorized, before the municipality’s governing body has authority to adopt an interim ordinance, the Court of Appeals concluded that the interim ordinance was valid because the City “authorized the study process *at the same time* it adopted the interim ordinance.” *Pawn America*, 2009 WL 2447746, at *4 (emphasis added). This conclusion is unsupported by law.

Under Minn. Stat. § 645.08(1), courts should construe the words and phrases of a statute “according to rules of grammar and according to their common and approved usage.” Minn. Stat. § 645.08(1). The rules of grammar establish that the use of the present tense in the phrase “is conducting” connotes a continuing action, while the use of the past tense, “has authorized,” refers to an action already completed. *See The Chicago Manual of Style* § 5.108, at 176, § 5.117, at 178 (15th ed. 2003) (stating that present participle denotes an action that is “in progress or incomplete at the time expressed” and that past tense “denotes an act, state, or condition that occurred or existed at some point in the past”). The plain language of the statute limits the governing body’s authority to situations when (1) the City is in the process of conducting an ongoing study or (2) at a minimum, has already authorized a study that has yet to begin. The statute does not authorize the simultaneous adoption of the interim ordinance and authorization of the study. Had the legislature chosen to grant the City this authority, it could have easily and unambiguously expressed this choice by including words such as “is authorizing studies”

or “intends to conduct studies.” In the absence of such language, however, the City’s authority is limited to the express authority granted to it. *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006) (“[M]unicipalities possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers.”)

This grammatical distinction is also consistent with the statutory language requiring that adoption of an interim ordinance be for the purpose of protecting the planning process. If the City had been in the midst of conducting a study or had previously authorized a study, the planning process might be jeopardized by the issuance of a license subject to the study. When no planning process has been initiated, however, no planning process exists to be protected through the governing body’s adoption of an interim ordinance.

A review of other language employed by the legislature in a similar statute establishes the significance of this grammatical distinction. Minn. Stat. § 394.34, which authorizes *counties* to adopt interim zoning ordinances, states in full:

If a county *is conducting* or in good faith *intends to conduct* studies within a reasonable time, or *has held* or *is holding* a hearing for the purpose of considering a comprehensive plan or official controls or an amendment, extension , or addition to either, or in the event new territory for which no zoning may have been adopted, may be annexed to a municipality, the board in order to protect the public health, safety, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning ordinance, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency. Such interim resolution shall be limited to one year from the date it becomes effective and to one year to renewal thereafter.

Minn. Stat. § 394.34 (emphasis added). Thus, Section 394.34 authorizes, in relevant part, a county board to adopt an interim ordinance when:

1. The County *is conducting* studies; or
2. The County in good faith *intends to conduct* studies.

This statutory language is distinct in two material ways from the language of Section 462.355, subdivision 4(a). First, Section 394.34 authorizes a county board to adopt an interim ordinance when it “in good faith intends to conduct studies,” while Section 462.355, subdivision 4(a), authorizes a municipality’s governing body to adopt an interim ordinance only when the municipality “has authorized a study.” Second, Section 394.34 does not require that an interim ordinance be for the purpose of protecting an existing planning process.

Thus, while a county board has authority to adopt an interim ordinance as long as the county intends in good faith to conduct studies in the future, a municipality must already have commenced its study or taken the affirmative step of formally authorizing a study, before its governing body may adopt an interim ordinance. The additional limit on a municipality’s authority is consistent with the second statutory distinction – a county’s interim ordinance, unlike a municipality’s interim ordinance, need not be for the purpose of *protecting an existing* planning process. Because a municipality’s authority is confined by this requirement, it makes sense that the City must have at least authorized a planning study that would be protected by the interim ordinance. Simply stated, the unambiguous statutory language leaves no room for the concurrent adoption of the interim ordinance and the commencement of the planning process.

The Court of Appeals nonetheless concluded that the statute allows a city council to halt a particular, unpopular, and conforming use or development so long as the city council authorizes a planning study at the same time it adopts an interim ordinance and then goes through the motions of a planning process. This interpretation cannot reasonably be the legislature's intent. *See* Minn. Stat. § 645.17(1) (the legislature does not intend a result that is absurd or unreasonable). Indeed, this flawed interpretation of the statute would enable a municipal governing body to stop *any* project at *any* time and for *any* reason, regardless of whether the applicant complied with existing law.

B. The Undisputed Facts Establish that the City Did Not Adopt the Interim Ordinance for the Purpose of Protecting the Planning Process.

The second requirement of Section 462.355, subdivision 4(a), is that an interim ordinance must be adopted for the “purpose of protecting the planning process.” Minn. Stat. § 462.355, subd. 4(a). This statutory requirement mandates that this Court evaluate the undisputed facts to determine whether the purpose of the interim ordinance was to protect the planning process or whether the interim ordinance had another purpose, such as to delay or prevent Pawn America's project. *Medical Services, Inc. v. City of Savage*, 487 N.W.2d 263, 267 (Minn. App. 1992). The undisputed facts surrounding the City's decision to adopt the interim ordinance, the City's efforts to delay the processing of Pawn America's application, and the City's manipulation of the procedural requirements for an interim ordinance, all establish that the City did not act to protect a planning process.

1. Decision to Adopt Interim Ordinance

The undisputed material facts demonstrate that the City adopted the interim ordinance to prevent the issuance of Pawn America's license, not to protect any planning process. While the majority at the Court of Appeals apparently dismissed the significance of these undisputed facts, the dissent properly observed that the "record is replete with quotes from the city's mayor and council members admitting that they would use any means, including an interim 'study' ordinance, to stop the Pawn America project." *Pawn America*, 2009 WL 2447746, at *6 (Stauber, J., dissenting).

With respect to the City's decision to adopt the interim ordinance, the record includes extensive undisputed evidence that the City's decision was for the sole purpose of preventing Pawn America from obtaining a license. For example, in response to neighborhood opposition to Pawn America's proposed operation of a pawn store at the Property, Councilmember Basill suggested that the City "lower the number [of] allowable [licenses] asap." (A.070.) Thus, the City's first proposed action was designed to prevent Pawn America from obtaining the only remaining pawnbroker license by simply eliminating its availability altogether. Significantly, this drastic initial proposal did not involve any evaluation or study of zoning issues or pawn stores in general. Rather, it was merely focused on preventing the issuance of a pawnbroker license for the Property. Indeed, only when this proposed solution was deemed unlawful by the City Attorney did the City decide to pursue an interim ordinance so as to secure the same result. (A.082-A.083.)

Responding to Councilmember Basill's concerns, City Manager Harmening inquired as to the status of Pawn America's license processing and, after learning that the license application had not yet received final approval, instructed the Inspections Supervisor to "hold off on signing or approving anything further." (A.073.) The Inspections Supervisor promptly complied with this instruction. (*Id.*) At this stage, the City had yet to even discuss the possibility of an interim ordinance. Nonetheless, the City took the first step to ensure that Pawn America would not receive a pawnbroker license by deliberately and illegally halting the processing of its application.

Additionally, when City Manager Harmening abruptly raised the issue of Pawn America's license application at the City Council's regularly scheduled session (despite the absence of this issue from the agenda), the Mayor responded so as to clearly demonstrate the true purpose behind the interim ordinance. He did not propose that the City study its zoning laws or the laws generally applicable to pawnbroker licenses. And, contrary to the view of the Court of Appeals majority, neither the Mayor nor any Councilmember expressed concern about whether Pawn America's proposed operations substantially differed from those of the existing pawn store or whether the particular activities proposed at the Property warranted further study. *Pawn America*, 2009 WL 2447746, at *5. Instead, without expressing any need for further study, the Mayor simply asserted that the City should find a way to say "no" to this particular project. (A.081.) In short, the purpose of the interim ordinance was to preclude the issuance of this particular license, not to protect any planning process.

Moreover, after the City Attorney proposed an interim ordinance as a method for the City to say “no” and the same day that the City Council adopted the first reading of the interim ordinance, the City’s Communication Coordinator confirmed the true purpose for the interim ordinance in an e-mail to City Manager Harmening. Seeking the City Manager’s guidance on how to handle questions about the genesis of the interim ordinance, Zwilling questioned whether the City had “legal concerns [about] acknowledging that the interim ordinance was related to a specific application” and stated that “[i]t will be very clear soon that it was this particular application that brought this to the forefront.” (A.091.) This e-mail by a City official further demonstrates that the purpose of the interim ordinance was not to protect a planning process, but to address Pawn America’s particular application.

These and other undisputed facts regarding the City’s decision-making process establish that the purpose for the interim ordinance was to foil Pawn America’s proposed project. Therefore, under the plain language of Minn. Stat. § 462.355, subd. 4(a), the interim ordinance is invalid because it was not adopted for the purpose of protecting the planning process.

2. City’s Delay in Processing Pawn America’s License Application

In addition to the undisputed facts relating to the City’s decision to adopt an interim ordinance, the record also contains undisputed facts concerning the City’s efforts to delay the processing of the application and accelerate the effective date of the interim ordinance for the purpose of ensuring that this particular pawnbroker license would not

be issued. The dissent properly identified these efforts as “political manipulations.” *Pawn America*, 2009 WL 2447746, at *6 (Stauber, J., dissenting).

These political manipulations fall into two general categories: (1) conduct to delay the processing of Pawn America’s application and (2) conduct to accelerate the effective date of the interim ordinance. With respect to the first category of political manipulations, the City repeatedly acted to delay the processing of Pawn America’s application despite earlier informing Pawn America that the license issuance was “not going to be a problem” and that once Pawn America had either a lease or title to the Property, the license would be “good to go.”

First, before the City had even proposed the interim ordinance, the City stopped processing Pawn America’s application.¹ Indeed, before the City adopted the first reading of the interim ordinance on October 1, 2007, city staff had already, pursuant to instructions from a Councilmember Basill, stopped processing Pawn America’s license application. (A.073.) Second, when Pawn America learned about the proposed interim ordinance and responded by immediately obtaining a lease to the Property, the City refused to issue the license, contending for the first time that it had not yet completed a background check. (A.109.) Third, the City deliberately delayed commencing and proceeding with the background check. More specifically, although the City’s Inspection

¹ Unlike some municipalities, the City does not have any ordinance that authorizes the City to stop processing a license application before the adoption of an interim ordinance. *Cf. Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539, 542 (Minn. App. 1995) (upholding Minneapolis Code of Ordinances section 534.470(c)(1), which expressly required that the City of Minneapolis stop processing license applications while decisions on interim ordinances were pending). Because the City had no such ordinance, its actions to immediately stop processing Pawn America’s license application were unlawful.

Supervisor requested the background check be completed by October 12, 2009, the police department did not assign the background check until October 9 when the district court ordered the City to continue processing Pawn America's application. (A.106.) Finally, despite initial estimates that the background check could take two to four weeks, the City did not complete the background check until mid-December – more than eight weeks later. (A.104, A.106.) By that time, the interim ordinance was in place and the originally scheduled closing date had passed.

3. City's Manipulation of Procedural Requirements for Interim Ordinance

To further ensure that the interim ordinance was effective before the scheduled closing date, the City also manipulated its procedural requirements for an interim ordinance. First, even though the City indicated that it “took a pretty good look” at its pawnbroker licensing in 2002 and had never expressed a need to reexamine the issue, the City purportedly decided to suddenly implement a study at the same time that it conducted the first reading of the interim ordinance. (A.081.)

Second, because the St. Louis Park City Charter requires that a proposed ordinance receive two readings at least seven days apart, the City deliberately skewed the timing for the second reading by scheduling a special session solely for that purpose, seven days after the first reading. *See* St. Louis Park City Charter § 3.05. As City Manager Harmening explained in an e-mail to City Council members, “[t]his approach is being proposed to meet certain scheduling considerations.” (A.093.) There can be no

doubt that the “scheduling considerations” were Pawn America’s scheduled closing on the Property and concurrent entitlement to its pawnbroker license.

Third, the City manipulated the process for publishing the interim ordinance to meet its self-imposed deadline for ensuring that the interim ordinance was effective before the closing on the Property. The City’s Charter requires that the interim ordinance be published in the City’s official newspaper fifteen days before it becomes effective. St. Louis Park City Charter, §§ 3.07, .08. Because the official newspaper is only published every Thursday and requires all legal notices to be submitted the preceding Thursday, the normal schedule for publishing an ordinance would have resulted in the interim ordinance becoming effective November 2 – after the scheduled October 31 closing on the Property. To avoid this result, the City “pre-published” the interim ordinance by sending it to the official newspaper on October 3, days before any second reading, so that the ordinance would become effective on October 26 – five days before the scheduled closing date. (A.099.) Significantly, there is no provision in the City’s code that allows for such “pre-publishing.”

Simply stated, the City orchestrated the scheduling of both its processing of Pawn America’s application and its enactment of the interim ordinance for the sole purpose of preventing Pawn America from obtaining the license. Based on the undisputed facts, this Court should conclude that the City did not adopt the interim ordinance for the purpose of protecting a valid planning process, as required by Minnesota law, and that the interim ordinance therefore is invalid.

The undisputed facts in this case establish that the City had not commenced any planning process in advance of adopting the interim ordinance. Indeed, before deciding to adopt the interim ordinance, the record reflects that the City had never expressed any interest in conducting any study relating to pawnbroker licenses. Only when the City learned that it could not simply reduce the number of available pawnbroker licenses did it decide to adopt the interim ordinance and simultaneously decide to authorize a planning study. This Court should not sanction the City's abuse of legislative power simply because the City sought to "paper over" its unlawful conduct with a hasty planning study. *See Medical Services*, 487 N.W.2d at 267. Planning studies must be driven by planning issues, not politics.

II. THE COURT OF APPEALS DECISION IS INCONSISTENT WITH MINNESOTA CASELAW, WHICH ESTABLISHES THAT THE INTERIM ORDINANCE IS INVALID.

A. Because the Interim Ordinance Does Not Meet the Requirements Articulated by the Supreme Court in *Almquist*, the Court of Appeals Erred by Affirming the Validity of the Interim Ordinance.

In 1976 – before the adoption of Minn. Stat. § 462.355, subd. 4, and its bright line requirement of a pre-existing planning authorization – this Court considered a municipality's authority to enact an interim ordinance and established a basic threshold requirement for its validity: *it must, among other things, be enacted in "good faith and without discrimination."* *Almquist v. Town of Marshan*, 308 Minn. 52, 65, 245 N.W.2d 819, 826 (1976) (emphasis added). The interim ordinance at issue here fails to meet this basic requirement.

In *Almquist*, a landowner applied to the Town of Marshan for a special use permit to develop twenty-six lots on his rural property. *Id.* at 53, 245 N.W.2d at 820. At the same time, three other developers submitted proposals to the town for similar developments. *Id.* at 63, 245 N.W.2d at 825. Confronted with multiple development proposals and lacking any comprehensive plan, the township refused to either grant or deny Almquist's special use permit and instead imposed a moratorium on new development pending completion of a comprehensive zoning study and the adoption of a comprehensive plan. *Id.* at 56-57, 245 N.W.2d at 822.

This Court upheld the interim moratorium, concluding that when enacted "in *good faith* and *without discrimination*, a moratorium on development which is of limited duration, is valid if upon enactment, the study proceeds promptly and appropriate zoning ordinances are expeditiously adopted when it is completed." *Id.* at 65, 245 N.W.2d at 826 (emphasis added). Thus, this Court articulated five distinct requirements for an interim ordinance to be valid: (1) it is adopted in good faith; (2) it is not discriminatory; (3) it is of limited duration; (4) it is for the purpose of developing a comprehensive zoning plan; and (5) the municipality acts promptly to adopt the plan. *Id.*

The undisputed facts of the instant case establish that the City's interim ordinance does not meet the *Almquist* requirements. The Court of Appeals, which chose not to analyze the City's conduct in light of *Almquist*, therefore erred by concluding that the interim ordinance was valid.

First, and most significantly, the interim ordinance was not adopted in good faith. The undisputed facts establish that the City reached a predetermined conclusion that

Pawn America should not receive a pawnbroker license and only thereafter took specific action to ensure that result. These actions included deliberate delays in processing Pawn America's application and an accelerated process for enacting an interim ordinance so as to buy time to enact a permanent law prohibiting the establishment of the pawn store. This conduct, in contrast to *Almquist*, does not meet any standard of good faith ever articulated by this Court, and this Court should not disregard the good faith standard and permit municipalities to engage in such political manipulations.

Second, the instant interim ordinance was adopted for a discriminatory purpose – to prevent one particular business from operating in the City. It is undisputed that Pawn America's license was the only possible license affected by the interim ordinance because Pawn America was the sole applicant for the only available pawnbroker license. In contrast to *Almquist*, the City was not evaluating multiple proposals by multiple persons to determine a comprehensive approach; it was implementing a strategy to block one business from operating. *See id.* at 63, 245 N.W.2d at 825. This targeted conduct amounts to discrimination and provides an independent basis to invalidate the interim ordinance.

Third, as discussed in depth above, the purpose of the City's interim ordinance was not to protect a proper planning process. In concluding that the interim moratorium in *Almquist* had a proper planning purpose, the court observed that the town board, which was composed of laypeople, was confronted with complex development issues within multiple proposals that “would have a profound effect on economic, esthetic, and engineering problems for many years to come” and lacked the benefit of an existing

comprehensive plan. *Almquist*, 308 Minn. at 64, 245 N.W.2d at 825-26. Therefore, this Court determined that the town had a genuine need for comprehensive planning and that it properly implemented the moratorium so as to obtain the assistance of professional planners. *Id.* at 64, 245 N.W.2d at 825. In contrast, the City expressed no need for comprehensive planning and decided to propose a planning study only after it realized it could not block the license simply by reducing the number of allowable pawnbroker licenses. Thus, the planning study was not the basis for the interim ordinance and was instead the method by which the City sought to achieve its improper goal – preventing the operation of Pawn America’s business.

B. The Decision of the Court of Appeals Is Inconsistent with Its Previous Decisions, Which Require a Determination that the Interim Ordinance Is Invalid.

While no Minnesota Supreme Court decision has interpreted Section 462.355, in several cases the Court of Appeals has applied Section 462.355 to determine the validity of interim ordinances. Of these precedents, the most relevant is *Medical Services*, which the dissent concluded “is squarely on all fours” with this case. *Pawn America*, 2009 WL 2447746, at *6 (Stauber, J., dissenting). The determination of the Court of Appeals in the instant case, however, flatly contradicted its previous holding in *Medical Services*.

The central holding of *Medical Services* is that a city “may not arbitrarily enact an interim moratorium ordinance to delay or prevent a single project.” *Medical Services*, 487 N.W.2d at 267 (citing *Almquist*, 245 N.W.2d at 825); *see also City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225, 229 (Minn. App. 1997). Indeed, in its decision for the instant case, the Court of Appeals expressly acknowledged this fundamental limit on

a city's authority to adopt an interim ordinance. *Pawn America*, 2009 WL 2447746, at *3. The court erred, however, by failing to recognize that *Medical Services* mandates a determination that the City's interim ordinance is invalid. *Id.* at *4.

Medical Services involved a proposed infectious-waste processing facility. *Medical Services*, 487 N.W.2d at 265. The initial dispute was whether the proposed facility was a permitted use in an industrial zone. *Id.* *Medical Services* brought a declaratory judgment action to resolve this dispute. *Id.* Seven weeks later, the City of Savage adopted a resolution that simultaneously implemented a planning study and an interim ordinance placing a moratorium on the issuance of building permits and special use permits in industrial zones. (A.146.); *Medical Services*, 487 N.W.2d at 267. After the district court granted summary judgment in favor *Medical Services*, the Court of Appeals affirmed, holding that the City of Savage acted arbitrarily in adopting the moratorium, that the moratorium was invalid, and that the moratorium did not apply to *Medical Services*' building permit application. *Medical Services*, 487 N.W.2d at 267.

Despite the Court of Appeals majority's efforts to distinguish *Medical Services*, the undisputed material facts of this case warrant the same result as *Medical Services*.

First, as was the case in *Medical Services*, the City was aware of *Pawn America*'s license application for months before the City Council adopted the interim ordinance. *Id.* at 265. While the majority mistakenly states that the City "did not know of appellant's plans far in advance," the dissent properly recognizes that the City "knew of *Pawn America*'s proposal in June 2007" and did not begin the process of adopting the interim

ordinance until September 2007. *Pawn America*, 2009 WL 2447746, at *6 (Stauber, J., dissenting).

Second, as in *Medical Services*, the City Council chose to adopt an interim ordinance only when it learned that its other efforts to block issuance of Pawn America's license would not succeed and that, absent an interim ordinance, the license would issue. In *Medical Services*, the City of Savage first tried to block Medical Services' application under its existing ordinance, then sought to define the proposed project as a conditional use, and finally pursued an interim ordinance when it realized these earlier efforts would not succeed. See *Medical Services*, 487 N.W.2d at 267. Similarly, the City first evaluated whether it could prevent Pawn America from obtaining a license by reducing the number of allowable licenses and, only after learning that this approach was unlawful, decided to adopt an interim ordinance. Significantly, while the majority tries to distinguish *Medical Services* by noting that the City acted "immediately" after learning of Pawn America's application, the Savage City Council also acted "immediately" by terminating Medical Services' application within two weeks after learning of it. *Pawn America*, 2009 WL 2447746, at *4; *Medical Services*, 487 N.W.2d at 267.

Third, as was the case in *Medical Services*, only one business was affected by the interim ordinance. *Medical Services*, 487 N.W.2d at 267. With only one pawnbroker license available and only one application pending, Pawn America was the only business that potentially could have been affected by the interim ordinance.

Fourth, the City, like the City of Savage in *Medical Services*, announced its decision to commence a planning study only when it adopted the interim ordinance. *Id.*

Before adopting the interim ordinance, the City expressed no interest in studying the issue of pawnbroker licensing or pawn stores in St. Louis Park. Therefore, as in *Medical Services*, no planning process existed for an interim ordinance to protect.

Fifth, in both *Medical Services* and the case at bar, the cities had previous opportunities to amend their zoning ordinances in ways that could have addressed the proposed projects, but had chosen not to do so. *Id.* In this case, the City Council had taken “a pretty good look” at its pawnbroker ordinance in 2002 and made several amendments, including a reduction in the number of available pawnbroker licenses from three to two, but did not adopt any residential distance requirements or otherwise restrict pawnbroker licenses. (A.081.) Indeed, the only other pawn store within St. Louis Park, Excel Pawn, has been located in a residential area since February 1, 2006.² (A.165-A.166.)

Furthermore, the central holding of *Medical Services* is that when a city adopts an interim ordinance to delay or prevent a single project, the interim ordinance is invalid. The undisputed material facts establish that the City did, in fact, adopt the interim ordinance for the sole purpose of preventing Pawn America’s particular project and that the subsequent planning process was a post-hoc effort to legitimize the City’s actions.

² While the Court of Appeals stated that Pawn America’s proposed operation “was structurally different” from the City’s only other pawn store because it “included check-cashing and other adult-oriented services,” the undisputed facts of this case, as set forth in the parties’ summary judgment briefs, do not include any evidence of any such differences. *Pawn America*, 2009 WL 2447746, at *5. Instead, the record shows that Excel Pawn engages in check cashing and currency exchange. (Supp. Aff. of Thomas M. Scott dated May 9, 2008, Ex. A.)

When the City first learned of Pawn America's license application, Inspections Supervisor Boettcher articulated the City's initial position, stating that there was "not going to be a problem issuing that license" and that, once the closing occurred, the license would be "good to go." (A.133.) This approach changed dramatically, not as a result of a planning process or other evaluation of the City's pawnbroker licensing, but rather as a result of the City's political maneuvering in response to neighborhood opposition shortly before the scheduled closing. After the Mayor instructed City officials to "[f]igure out a way to say 'no,'" the license was subjected to deliberate and repeated delays as the City sought to first impede the processing of Pawn America's application and later deny the issuance of the license, despite Pawn America holding the required lease for the Property. (A.081.)

In light of these undisputed facts, there can be no question that the City adopted the interim ordinance not just "in response" to a particular project as the City claims, but to prevent this particular project. As Minnesota courts have acknowledged, an interim ordinance is not a vehicle for a city to buy time to extinguish a project that neighbors and city council members dislike. *See Medical Services*, 487 N.W.2d at 267. In such circumstances, the interim ordinance is invalid. Therefore, because the City acted arbitrarily by engaging in "open and obvious discrimination against a complying 'single project,'" the district court's decision should be reversed. *See Pawn America*, 2009 WL 2447746, at *7 (Stauber, J., dissenting).

III. BECAUSE THE INTERIM ORDINANCE IS INVALID, PAWN AMERICA SHOULD BE GRANTED A PAWNBROKER LICENSE NOTWITHSTANDING THE SUBSEQUENT ENACTMENT OF THE PERMANENT ZONING ORDINANCE.

The City has previously asserted that, regardless of whether the interim ordinance was valid, the permanent zoning ordinance it enacted in February 2008 now precludes issuance of a pawnbroker license to Pawn America. This assertion, however, is unsupported by the facts and applicable law.

At the outset, the only reason Pawn America did not receive its pawnbroker license before the amendment of the permanent zoning ordinance was because the interim ordinance prevented the issuance of that license. (A.103.) In the absence of the interim ordinance, the City would have been obligated to issue Pawn America's license on September 27, 2007, when Pawn America leased the Property and certainly no later than January 7, 2008, when the closing on the Property occurred. By that time, the last procedural requirement – the background check – had been completed, and nothing remained to prevent the issuance of the license. (A.104.) The permanent zoning ordinance was not enacted until February 2008. Thus, only the existence of the invalid interim ordinance prevented Pawn America from obtaining its license before the City permanently amended its zoning ordinance.

The applicable law reflects that, if the interim ordinance was invalid, the City cannot use the resulting permanent ordinance as a basis to deny the license. In *Alexander v. City of Minneapolis*, this Court determined that a party may obtain relief from a permanent ordinance adopted during the pendency of an illegal freeze on the processing of applications. 267 Minn. 155, 158, 125 N.W.2d 583, 585-86 (1963). In *Alexander*, the

property owner applied on November 2, 1962, for a building permit to construct a six-story apartment building. *Id.* at 157, 125 N.W.2d at 585. At that time, the property was zoned for multiple dwellings of up to six stories. *Id.* The property, however, was under a “hold order” adopted by the city council on July 10, 1953, which prohibited the issuance of any building permits for the property until the city passed a comprehensive rezoning ordinance. *Id.* But for the hold order, the six-story project complied in all respects with the zoning and building code, and the property owner would have been entitled to the permit. *Id.* The building inspector denied the permit on the basis of the hold order. Later, on December 14, 1962, the city council amended the zoning ordinance to limit multiple dwellings on the property to two and one-half stories. *Id.*

In a declaratory judgment action brought by the property owner, this Court decided that the city adopted the hold order in violation of state statutes. *Id.* at 158, 125 N.W.2d at 585-86. This Court therefore affirmed the district court’s order directing the building inspector to issue the building permit for the six-story building in accordance with the *previous* zoning requirements. *Id.*

The holding and rationale in *Alexander* are controlling here. In both *Alexander* and the instant case, the project complied with then-current zoning. In both cases, the municipality refused to grant approvals based on an illegal moratorium adopted in violation of a state statute. And, in both cases, the municipality adopted new and more restrictive zoning while an illegal moratorium was in effect. Just as the *Alexander* court declared that the subject permit should issue, the same relief should issue in this case.

CONCLUSION

The Court of Appeals erred in concluding that the City's interim ordinance on the establishment of pawn stores was valid and that the City is not required to issue a pawnbroker license to Pawn America. Based on the unambiguous language of Minn. Stat. § 462.355 and the applicable caselaw, Pawn America is entitled to an order declaring that the interim ordinance was invalid and directing the City to issue its pawnbroker license.

November 30, 2009

Respectfully submitted,



Scott G. Harris (#0132408)

Matthew B. Seltzer, Esq. (#0130874)

Aleava R. Sayre (#0386491)

LEONARD, STREET AND DEINARD

Professional Association

150 South Fifth Street, Suite 2300

Minneapolis, Minnesota 55402

Phone: (612) 335-1500

Eileen M. Roberts, Esq. (#0092174)

875 Summit Avenue

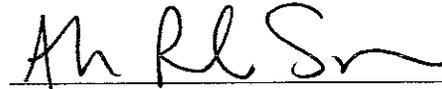
St. Paul, Minnesota 55105

Phone: (651) 290-6420

**ATTORNEYS FOR APPELLANT
PAWN AMERICA MINNESOTA, LLC**

CERTIFICATE OF COMPLIANCE

The undersigned, Aleava R. Sayre, hereby certifies, pursuant to Minn. R. Civ. App. P. 132.01, subd. 3(a), that the word count of the attached Brief of Appellant, exclusive of pages containing the Table of Contents and the Table of Authorities, is 10,078 words. The Brief complies with the typeface requirements of the rule and was prepared, and the word count was made, using Microsoft Word 2003.


ALEAVA R. SAYRE

Subscribed and sworn to before me
this 30th day of November, 2009.



Notary Public

