

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 OF *AMICUS CURIAE*
LEAGUE OF MINNESOTA CITIES

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LEGAL ISSUES

1. Can the City be compelled to issue a pawnbroker's license to an applicant in violation of its current Zoning Ordinance when the applicant has no vested right to the continuation of the previous zoning regulations?

The court of appeals upheld the district court's determination that Appellant is not entitled to a pawnbroker's license because Appellant's property cannot be used as a pawnshop under the City's current Zoning Ordinance.

2. Was the Interim Ordinance validly enacted under Minn. Stat. § 462.355, subd. 4 when the City in response to an application for a pawnbroker's license adopted an Interim Ordinance temporarily prohibiting pawnshops while the City conducted a planning study to determine how pawnshops should be regulated within the city to protect the public health, safety and welfare?

The court of appeals upheld the district court's determination that the Interim Ordinance was validly enacted.

INTRODUCTION

The League of Minnesota Cities (League) has a voluntary membership of 830 out of 854 Minnesota cities including the City of St. Louis Park.¹ The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management and advocacy services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis and trusted guidance for all Minnesota cities. The League has a public interest in this appeal as a representative of hundreds of cities throughout the state with authority to adopt interim ordinances in order to effectively plan the use of land within their boundaries.

In this case, the City of St. Louis Park ("City") adopted an Interim Ordinance as authorized by Minn. Stat. § 462.355, subd. 4 ("the Interim Ordinance statute") shortly after the City Council became aware that Pawn America Minnesota, LLC ("Pawn America") had applied for a license for a proposed pawnshop operation that would consist of a secondhand goods store, precious metals dealer and an industrial loan and thrift company operating a payday lending outlet. (A127) The Interim Ordinance placed a moratorium on the land use of pawnshops while the City conducted a planning study to determine how pawnshops should be regulated within the City to protect the public

¹ Pursuant to Minn. R. Civ. App. P. 129.03, the League certifies that this brief was not authored in whole or in part by counsel for either party to this appeal and that no other person or entity besides the League made a monetary contribution to its preparation or submission.

health, safety and welfare. (Appellant's Add.29) Approximately four months after adopting the Interim Ordinance and completing its planning study, the City amended its Zoning Ordinance to make pawnshops a conditional rather than a permitted use. (RA61-63) Pawn America's proposed pawnshop operation would violate the City's current Zoning Ordinance because it directly abuts residentially zoned property. (RA60)

STATEMENT OF THE CASE AND THE FACTS

The League concurs with the City's statement of the case and the facts.

LEGAL ARGUMENT

The City's Brief demonstrates why the court of appeals' decision should be affirmed. The League will not repeat the City's legal arguments here. Instead, this brief will focus on the statewide significance of this appeal for cities and on why it is good public policy to allow cities to use the Interim Ordinance statute to react quickly to authorize a planning study in response to a pending application.

I. The resolution of this appeal will have a significant, statewide effect on Minnesota cities.

All 854 Minnesota cities will be affected by the resolution of this appeal in which this Court will interpret the Interim Ordinance statute for the first time and provide guidance regarding the status of this Court's holding in *Almquist v. Town of Marshan*, 308 Minn. 52, 245 N.W.2d 819 (1976) which preceded the adoption of the statutory language authorizing cities to impose moratoria. This Court's decision will have a significant, statewide effect on Minnesota cities because it will directly impact their legislative authority to adopt interim ordinances in order to effectively plan the use of

land within their boundaries. Minn. Stat. § 462.355, subd. 4; Minn. Stat. § 462.351, et seq.

Well-established Minnesota law confirms that cities have broad discretion when exercising their legislative authority to adopt and amend ordinances. *See, e.g., Thul v. State*, 657 N.W.2d 611, 617 (Minn. 2003) (noting that if the reasonableness of an ordinance is debatable courts will not interfere with legislative discretion); *State by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885, 888 (Minn. 1978) (noting that a city's legislative act must be upheld unless it is "unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare"). Well-established Minnesota law likewise confirms that cities have broad discretion when adopting interim ordinances. *See e.g., City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225, 228 (Minn. Ct. App. 1997) (noting that the Interim Ordinance statute gives cities broad powers to adopt interim ordinances). All Minnesota cities have an interest in ensuring that their legislative decisions continue to receive the deference they are due under this well-established law.

All Minnesota cities also have an interest in ensuring that they can use the Interim Ordinance statute to react quickly to a pending application in order to protect the health, safety and welfare of their citizens. The U.S. Supreme Court has recognized that moratoria are considered "an essential tool of successful development" because they preserve the status quo for a short period of time to allow land-use planners to create a development strategy that will be more beneficial for the surrounding community.

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S.

302, 337-38, 122 S. Ct 1465 (2002). Municipalities across our country have imposed moratoria in response to proposed land uses with significant effects on the surrounding community including cellular towers, adult bookstores, mobile home parks, nursing homes, video arcades, livestock operations, billboard signs, apartment dwellings, recycling businesses, fast food restaurants, and time share units. Patricia E. Salkin, *American Law of Zoning* § 6:24 (5th ed. 2009). Minnesota municipalities have likewise adopted interim ordinances imposing moratoria in connection with a variety of proposed land uses including a feedlot (*Duncanson v. Bd. of Supervisors of Danville Tp.*, 551 N.W.2d 248 (Minn. Ct. App. 1996)); an adult-use business (*City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225 (Minn. Ct. App. 1997)); and a pawnshop (*Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539 (Minn. Ct. App. 1995)).

Pawnshops raise significant concerns for the public health, safety and welfare. Our state legislature, for example, has already adopted legislation regulating pawnshops and requiring cities to enforce certain minimum requirements for the licensing of pawnbrokers and authorizing the local adoption of more restrictive requirements. *See* Minn. Stat. ch. 325J. Pawnshops raise significant concerns at the local level because of the effects they have on the surrounding community. The conclusions of the City's planning study in this case, for example, noted the following concerns regarding the operation of pawnshops within the City: that issues regarding neighborhood image and encouraging investment in properties are especially important for St. Louis Park as a first ring suburb; that many commercial areas abut single family homes which requires more fine tuned control of commercial land uses with potential negative effects; that the City's

aging commercial areas and adjoining older neighborhoods are vulnerable to the potential negative impacts of uses like pawnshops especially when concentrated in areas where adult uses and other similar uses are present. (RA78)

Pawnshops raise urban-blight concerns because they tend to concentrate in areas that are in close proximity to low-income individuals. In fact, the City of Minneapolis amended its zoning ordinance in 2000 to increase the separation distance between pawnshops and other restricted uses to 1,500 feet because of urban-blight concerns.

Pawn America Minnesota, LLC v. City of Minneapolis, No. C6-99-1702, 2000 WL 343233 (Minn. Ct. App. Apr. 4, 2000) (unpublished decision). (Amicus Add. at Add-1)

Pawn America had already submitted an application to operate a pawnshop in Minneapolis before the city amended its zoning ordinance, and it sued challenging the amendment's validity. The court of appeals upheld the amendment concluding that under the deferential standard of review for legislative decisions "the city could reasonably assume that the concentration of businesses such as pawnshops and currency exchanges presented the danger of urban blight." *Id.* All Minnesota cities, like Minneapolis and St. Louis Park, have a similar interest in ensuring that they can regulate pawnshops in a way that protects the health, safety and welfare of their citizens.

I. It is good public policy to allow cities to use the Interim Ordinance statute to react quickly to authorize a planning study in response to a pending application.

There are several reasons why it is good public policy to allow cities to use the Interim Ordinance statute to react quickly to authorize a planning study in response to a pending application. First, it is consistent with the deferential standard of review for

legislative decisions that is required by constitutional principles of separate governmental power. Minn. Const. art. 3, § 1. City councilmembers have been elected to make legislative decisions, and they will be responsible at the ballot box if citizens are unhappy with how those decisions are being made. Indeed, this Court has consistently noted the deference to which legislative decisions are entitled.

We should think that a court of law and equity would hesitate to interfere in the performance by a legislative body of its political and policy decisions which, in absence of evidence of taint or fraud, have as their primary, if not sole objective, the general well-being of the community they are selected to represent. In our view, only the most compelling reasons and the clear necessity to avoid the most unconscionable results could, if at all, sustain the substitution by the court of its judgment for that which is committed to the discretion of the legislative organ.

Ridgewood Dev. Co. v. State, 294 N.W.2d 288, 293 (Minn. 1980) (quoting *Hunt v. Gov't of Virgin Islands*, 382 F.2d 38 (3d Cir. 1967)). Property owners should not be allowed to ignore constitutional principles of separate governmental power and entangle courts in second-guessing the legislative decisions made by city councilmembers when adopting and amending ordinances.² Pawn America should lobby the legislature (and not this Court) if it believes that it has a convincing policy argument regarding why the Interim Ordinance statute should be amended to strip cities of their broad police powers and planning authority.

Second, it is good public policy to allow cities to use the Interim Ordinance statute to react quickly to a pending application because it favors the public interest by allowing

² The deferential standard of review for legislative decisions also attaches to the City's amendment of its Zoning Ordinance. The League concurs with the City's legal arguments regarding why it cannot be compelled to issue a pawnbroker's license in violation of its current Zoning Ordinance. See Respondent's Br. at 13-16.

cities to protect the public health, safety and welfare. The Interim Ordinance statute should not be interpreted in a way that allows land-use applicants to force the approval of their applications at the detriment of the public interest. *See* Minn. Stat. § 645.17 (noting that when ascertaining the legislature’s intention it should be presumed that the legislature intends to favor the public interest against any private interest). This Court has already recognized that municipalities have broad police powers to engage in land-use planning. *Almquist v. Town of Marshan*, 308 Minn. 52, 64, 245 N.W.2d 819, 825 (Minn. 1976) (holding that even without statutory authority, cities are authorized to adopt moratoria under their broad police powers). This Court has also consistently recognized that land-use applicants have no vested rights in zoning regulations. *See, e.g., Property Research and Dev. Co. v. City of Eagan*, 289 N.W.2d 157, 158 (Minn. 1980) (noting there “is no vested right in zoning”). Minnesota cities of all sizes and levels of sophistication can be surprised by an application for a land use that raises unforeseen concerns. If cities cannot act quickly in these situations to freeze these applications to provide time for informed planning studies, there could be a variety of land uses that will become established with harmful effects on the surrounding community – effects that could have been eliminated or mitigated through land-use regulations.³

³ Appellant appears to be arguing that Minn. Stat. § 462.355, subd. 4(a) requires that a planning study must be authorized at a city council meeting prior to the meeting at which the city council adopts an Interim Ordinance. *See* Appellant’s Brief at 17-21. There is no requirement in the statute, however, for separate meetings or for any specific amount of time to have passed between the authorization of a planning study and the adoption of an interim ordinance. As a result, the court of appeals correctly held that a city can authorize a planning study, and at the same meeting, subsequently authorize the adoption and publication of an interim ordinance. (Appellant’s Add. at ADD.08)

And finally, allowing cities to use the Interim Ordinance statute to react quickly in response to a pending application does not leave property owners without a remedy in the rare circumstances where the enactment of an interim ordinance violates protectable property rights. Depending on the specific facts, for example, a property owner may be able to support a claim that the adoption of an interim ordinance has resulted in an unconstitutional taking. *See Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258 (Minn. Ct. App. 1992) (rejecting developer's claim that a two-year moratorium resulted in an unconstitutional taking). In addition, land-use applicants are free to make claims of vested-rights⁴ or estoppel in those rare cases where there are supportive facts. *See Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980) (analyzing a developer's claims of estoppel and vested rights based on the state legislature's amendment of the Municipal Industrial Development Act).

⁴ Appellant is not making a vested rights claim in this case. At the hearing on Appellant's Motion for a Temporary Restraining Order seeking to enjoin the City from enforcing its Interim Ordinance, Appellant informed the district court: "We're not arguing vested rights." (Tr. 60).

CONCLUSION

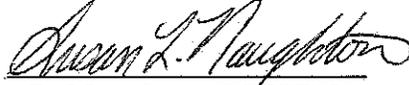
The resolution of this appeal will have a significant, statewide effect on Minnesota cities because it will impact their legislative authority to adopt interim ordinances in order to effectively plan the use of land within their boundaries. Cities should be allowed to use the Interim Ordinance statute to react quickly to authorize a planning study in response to a pending application because it is consistent with Minnesota law, and it is good public policy.

For all of these reasons, the League respectfully requests that this Court affirm the court of appeals' decision.

Dated: January 6, 2010

Respectfully submitted,

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