

No. A08-1697

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State of Minnesota  
**In Supreme Court**

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

Appellant,

vs.

City of St. Louis Park, Minnesota,

Respondent.

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**REPLY BRIEF OF APPELLANT  
PAWN AMERICA MINNESOTA, LLC**

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Appellant Pawn America Minnesota, LLC (“Appellant” or “Pawn America”) submits this Reply Brief in response to the briefs filed by Respondent City of St. Louis Park (“City”) and Amicus Curiae League of Minnesota Cities (“League”).

### ARGUMENT

The City confirms that it adopted the moratorium on new pawn stores to bring a halt to Pawn America’s plans to open a new store:

The City has never denied the fact that Pawn America’s plans to open its store became known to residents and individual City Council members in late September, *which prompted* the adoption of the Interim Ordinance. Nor has the City ever denied the fact that *individual residents and Council members thought that the Trestman site was a poor location for a pawnshop.*

(Respondent’s Brief (“Respondent’s Br.”) at 30 (emphasis added).) The record makes clear that the opposition by individual residents and Council members to Pawn America’s project directly led to the creation of the interim ordinance and the subsequent, after-the-fact “planning process.” The record also establishes that the one remaining pawn store license was available, that under the City’s existing comprehensive plan and zoning ordinance Pawn America’s license application was in order, and that the Trestman site was a legal, conforming location for a pawn store. As such, the Council lacked any authority to “regulate, restrict or prohibit” Pawn America’s project simply because individual residents and Council members may have thought the site “a poor location for a pawnshop.” The City’s conduct was and is the essence of discrimination, and the City’s above-quoted admission and statements of record by the

Mayor (“[f]igure out a way to say ‘no’”), Council members, and City staff require this Court to reverse the Court of Appeals and grant relief for Pawn America.

As recognized in *Almquist v. Town of Marshan*, 308 Minn. 52, 65, 245 N.W.2d 819, 826 (1976), and as repeatedly followed in *Medical Services, Inc. v. City of Savage*, 487 N.W.2d 263, 267 (Minn. App. 1992), *Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539, 543 (Minn. App. 1995), and *Duncanson v. Bd. of Supervisors of Danville Twp.*, 551 N.W.2d 248, 252 (Minn. App. 1996)—all of which decisions by the Court of Appeals post-date adoption of Minn. Stat. § 462.355—an interim ordinance will only be upheld when it is adopted “in good faith and without discrimination.” These principles are enshrined in Minn. Stat. § 462.355, subd. 4(a), which only allows the adoption of an interim ordinance for the purpose of protecting a preexisting planning process. Here, by the City’s own admissions of record, the interim ordinance was targeted specifically at Pawn America. The Court of Appeals erred in failing to follow its own decision in *Medical Services*, where it recognized, based on the principles enunciated in *Almquist*, that a city “may not arbitrarily enact an interim moratorium ordinance to delay or prevent a single project.” 487 N.W.2d at 267. The same result is compelled in the case at bar, because the record unequivocally confirms that the moratorium was not adopted for a legitimate statutory purpose, but rather to prevent Pawn America from opening its store. This Court should not uphold the illegal actions of the City, just because the City thereafter acted quickly, adopted self-serving findings, and ordered a perfunctory planning study. This Court must look at the facts, as did Judge Stauber who, in his dissenting opinion for the Court of Appeals, properly found that the City engaged in

“open and obvious discrimination against a complying ‘single project.’” *Pawn America Minnesota, LLC, v. City of St. Louis Park*, No. A08-1697, 2009 WL 2447746, at \*7 (Minn. App. Aug. 11, 2009)

As demonstrated below, the City’s adoption of a permanent ordinance prohibiting the establishment of a pawn store at the Property does not prevent this Court from ordering relief for Pawn America. The interim ordinance was adopted in violation of Minn. Stat. § 462.355, subd. 4(a) and relevant case law. In reviewing this case, the Court should not grant undue deference to the City. Moreover, it was the illegal interim ordinance, not the permanent ordinance eventually adopted by the City, that prevented Pawn America from receiving its pawnbroker license. Pawn America is entitled to an order directing the City to issue the license.

**I. THIS COURT CAN COMPEL THE CITY TO ISSUE THE PAWNBROKER LICENSE, NOTWITHSTANDING THE CITY’S EVENTUAL ADOPTION OF A NEW RESTRICTIVE ZONING ORDINANCE.**

The City argues that, regardless of any bad faith or discrimination in the adoption of the interim ordinance, this Court has no authority to order issuance of the pawnbroker license to Pawn America. (Respondent’s Br. at 13-16.) The City maintains that the remedy of a writ of mandamus became unavailable on February 22, 2008, when the permanent ordinance banning a pawn store at 5600 Excelsior Boulevard went into effect. In making this argument, the City misrepresents the nature of the relief sought by Pawn America. Certainly this action started as a mandamus case on October 4, 2007, when Pawn America filed its petition for a writ of mandamus. (Appellant’s Appendix (“A”) 201.) However, after the district court denied Pawn America’s petition

for a peremptory writ, and after the City Council voted to adopt a moratorium on new pawn stores, Pawn America amended its pleading on October 10, 2007 to include a complaint for declaratory and injunctive relief. (A.136-A.143.)

The City relies on three mandamus cases for the proposition that mandamus will not lie to compel an action prohibited by current law. *See Property Research & Dev. Co. v. City of Eagan*, 289 N.W.2d 157 (Minn. 1980); *State ex rel Rose Bros. Lumber & Supply Co. v. Clousing*, 268 N.W. 844 (Minn. 1936); *Rose Cliff Landscape Nursery Inc. v. City of Rosemount*, 467 N.W.2d 641 (Minn. App. 1991). These cases do not control the case at bar. The cases address mandamus, not the availability of declaratory and injunctive relief. As emphasized by the court in *Property Research*, “[o]ur decision is based solely upon the inappropriateness of an order of mandamus. We do not reach any conclusion concerning other remedies, if any, available to plaintiff.” 289 N.W.2d at 158; *see also Rose Cliff*, 467 N.W.2d at 644 (stating that “appellant’s remedy, if any, did not lie in a mandamus action”).

The City asserts that mandamus and a mandatory injunction are substantively the same. (Respondent’s Br. at 15.) The City maintains that mandamus is unavailable to compel issuance of the pawnbroker license now that the City has passed a permanent ordinance and that, therefore, no remedy is available to Pawn America.<sup>1</sup> In support of this position, the City cites *Curry v. Young*, 285 Minn. 387, 173 N.W.2d 410 (1969), where the plaintiffs used mandamus to challenge the denial of a zoning variance.

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<sup>1</sup> Significantly, the City does not argue that an injunction to prohibit the City from enforcing the permanent ordinance against Pawn America is unavailable, nor does the City argue that a declaratory judgment is unavailable.

Defendant City of Minneapolis argued that mandamus was not the proper procedure and that the plaintiffs should have proceeded by certiorari instead. In response, the *Curry* plaintiffs argued that they were suing for a mandatory injunction. 285 Minn. at 392, 173 N.W.2d at 413. This Court adopted a practical approach in *Curry* and found that “[w]hether we call it mandamus or mandatory injunction does not seem too important if we reach the merits of the dispute.” *Id.* at 394-95, 173 N.W.2d at 414. This Court found on the merits that the city was required to grant a variance. *Id.* at 397, 173 N.W.2d at 415.

*Curry* in no way stands for or supports the proposition that affirmative relief is precluded if mandamus is unavailable. On the contrary, *Curry* reflects that if the plaintiff is right on the merits, a remedy will be provided.<sup>2</sup> As stated by this Court, “[w]here, as here, attack upon acts of the city council is made on the grounds that the action is arbitrary, capricious, or unreasonable, it would appear that some remedy should be available to correct the action if the court finds that plaintiffs’ claims are well founded.” *Id.* at 394, 173 N.W.2d at 414. This notion is axiomatic, since “where there is a right, there must be a remedy” (*ubi jus ibi remedium*). See, e.g., *Ashby v. White*, 2 Ld. Raym. 938, 92 Eng. Rep. 126 (K.B. 1703); see also *Bivens v. Six Unknown Named*

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<sup>2</sup> The other cases cited by the City are of similar effect. None of these cases say that affirmative relief is unavailable if mandamus does not lie. See *State ex rel. Shloes v. University of Minnesota*, 236 Minn. 452, 463, 54 N.W.2d 122, 129 (1952); see also *Hecker v. Lapiz*, 463 U.S. 1328, 1333 (1983); *Stern v. South Chester Tube Co.*, 390 U.S. 606, 609 (1968); *Miguel v. McCarl*, 291 U.S. 442, 452 (1934); *Morrison v. Work*, 266 U.S. 481, 490 (1925). *Stern* made it clear that, even if the federal district court did not have jurisdiction over the subject matter for a mandamus action, the court still had power to order affirmative relief. 390 U.S. at 609.

*Agents*, 403 U.S. 388, 396 (1971). In the case at bar, the City acted arbitrarily and capriciously, Pawn America is entitled to relief on the merits, and technical arguments about the unavailability of mandamus should not stand in the way of that remedy.

As discussed in Pawn America's opening brief, *Alexander v. City of Minneapolis*, 267 Minn. 155, 125 N.W.2d 583 (1963), provides controlling precedent for this Court to grant Pawn America relief from a permanent ordinance adopted during the pendency of an illegal freeze on the processing of applications. (Appellant's Br. at 36-37.) The City attempts to distinguish this case on grounds that *Alexander* was decided before the 1965 Municipal Planning Act and that the "hold order" imposed by the City of Minneapolis in *Alexander* was nine years in duration. The City claims that *Alexander* does not provide authority to conclude that the St. Louis Park moratorium is per se invalid under current law. (Respondent's Br. at 15.) However, Pawn America does not rely upon *Alexander* for that purpose. The significance of *Alexander* is its confirmation that when a land use applicant is prevented from receiving a municipal approval due to an illegal freeze, this Court will afford a remedy even though a permanent ordinance prohibiting the activity has been passed in the meantime. *Alexander* is directly applicable to the case at bar.

The City also argues that Pawn America is not entitled to relief because it does not have a vested right to receive approval under the previous land use controls. (Respondent's Br. at 15.) Once again, the City misrepresents Pawn America's claims. Pawn America's case is not premised on vested rights. Pawn America makes a statutory claim based on Minn. Stat. § 462.355, subd. 4(a). Specifically, Pawn America

maintains that the City acted contrary to the statutory requirement that an interim ordinance must be “for the purpose of protecting the planning process.” See Minn. Stat. § 462.355, subd. 4(a).

In conclusion, Pawn America’s motion for summary judgment was not based on mandamus or vested rights. The relevant case law provides Pawn America with a remedy for relief from the City’s illegal actions, even though the City later passed a permanent ordinance.

**II. CONTRARY TO THE ARGUMENTS OF THE CITY, THE INTERIM ORDINANCE WAS ADOPTED IN VIOLATION OF MINN. STAT. § 462.355, SUBD. 4(A).**

This Court must be guided by Minn. Stat. § 462.355, subd. 4(a) in determining the validity of the interim ordinance. The City does not take seriously the requirements of the statute. The City’s position, as endorsed by the League, is that the City can adopt an interim ordinance to put a hold on, and ultimately foil, any project, as long as it thereupon formally orders a planning study. It is understandable why the City and the League would prefer that there be as few constraints as possible on the City’s ability to halt a particular development project, but their preference is not the law. Minnesota Statutes section 462.355, subdivision 4(a), and controlling precedents interpreting its requirements, allow the imposition of a moratorium only if: (1) a planning study has already been authorized; (2) the interim ordinance is adopted “for the purpose of protecting the planning process;” and (3) the interim ordinance is adopted “in good faith and without discrimination.” See *id.*; *Almquist*, 308 Minn. at 65, 245 N.W.2d at 826; *Medical Services*, 487 N.W.2d at 267; *Wedemeyer*, 540 N.W.2d at 543; *Duncanson*, 551

N.W.2d at 252. The City's strained interpretation of the statute would render these requirements meaningless. Under the facts of this case, this Court must find that the interim ordinance violated Minn. Stat. § 462.355, subd. 4(a).

**A. The Interim Ordinance Violated the Requirement that a Planning Study Must Be Commenced Before Adoption of an Interim Ordinance.**

The City now asserts that “[o]n *October 8*, 2007, the City Council adopted Interim Ordinance No. 2343-07.” (Respondent’s Br. at 8 (emphasis added).) By so asserting, the City wishes to convince this Court that the October 1, 2007 resolution directing City Planning staff to commence a study of pawnshop regulation arose *before* adoption of the interim ordinance, in compliance with the statutory requirement. But this assertion by the City is flatly contradicted by its prior admissions and the evidence on the record.

Contrary to its present position, the City admitted to the district court that “the City Council *at the time it adopted the Interim Ordinance also adopted a resolution to do a citywide zoning study relating to pawnships.*” (See City of St. Louis Park’s Mem. of Law in Opp. to Pawn America’s Mot. for Summ. J., filed May 9, 2008, at 7 (emphasis added).) In fact, at its meeting on October 1, 2007, the City Council unanimously passed a three-part motion as follows:

*[1] to adopt first reading of an Interim Ordinance temporarily prohibiting pawnshops and set second reading for October 8, 2007; [2] to adopt Resolution No. 07-105, directing City Planning staff to conduct a study to determine how pawnshops should be regulated within the City; and [3] directing City staff to immediately stop the further processing and approval of any pending or new applications for a pawnshop license.*

(A.141.) Quite simply, the City should not now be heard to contend that its interim ordinance was adopted later than its planning study. Of particular note, and as reflected in part 3 in the above-quoted motion, on October 1, the City Council directed City staff to immediately stop the further processing and approval of any pending or new applications for a pawn store license. Absent the adoption of the interim ordinance as part of the same motion, the City would have been without any arguable legal authority for so directing City staff. Further, the City submitted the interim ordinance for publication on *October 3, 2007*, prior to the second reading on October 8. (A.099.) The City now wishes to argue that it both submitted for publication, and relied upon to preclude all further processing of applications for a pawnbroker license, an interim ordinance which it had yet to adopt! This Court should not countenance this eleventh-hour position adopted by the City. It is perfectly apparent that adoption of the first reading of the interim ordinance and the initiation of the planning study occurred at the same time, on October 1, 2007. By any fair application of Minn. Stat. § 462.355, subd. 4(a) to the facts of this case, the City did not commence the planning study before the adoption of the interim ordinance, and nothing suggests the interim ordinance was introduced to protect a preexisting planning process. To endorse the City's position would be to undermine the legislative intent to allow moratoria only under limited circumstances, for the protection of legitimate, preexisting planning processes. In the instant case, the City initiated a so-called "planning process" only after-the-fact, as part of its "last resort" effort to deny Pawn America its license.

**B. The Record Establishes that the Interim Ordinance Was Not Adopted for the Purpose of Protecting a Legitimate Planning Process, but Was Adopted in Bad Faith and for a Discriminatory Purpose.**

As discussed at length in Pawn America's opening brief, the undisputed facts in the record demonstrate that the interim ordinance was arbitrarily and discriminatorily targeted at Pawn America rather than being a legitimate measure for protection of the planning process. Specifically, the trial court's findings of fact include the following relevant language:

- Counsel for Pawn America contacted the City on July 13, 2007 to determine the status of its license application. The City's Inspections Supervisor responded that "Everything looks great for the license. I cannot, however, physically issue this license until the store is ready to be open, but as far as we are concerned, the paperwork is in order and the license will be issued as soon as the store is ready for business." She reiterated this message in a voicemail. ("There's not going to be a problem issuing that license ... So, if there was a fear that you wouldn't get the license, you shouldn't have that fear. You are all set to go.")
- In September 2007, residents near the Property learned that it was set to become a Pawn America store. Several residents contacted City Councilmember John Basill and informed him of their opposition to having a pawn shop in the neighborhood. In response to this inquiry, *Basill indicated his intent to take steps to halt the project. ("I hope we have some leverage to prevent it within existing laws and ordinances.")*, ("Are not our limits on this [i.e., pawnshops] maxed? *If not, let's lower the number allowable asap.*") On Monday, September 24, the City Manager directed inspections and licensing to "hold off on signing or approving anything further." The City's Inspections department checked with the City's legal counsel to determine whether it could reduce the number of licenses from two to one, *in order to thwart Pawn America's pending application.*
- On September 24, 2007, the City Council held a regularly scheduled study session. At the end of this meeting, the City Manager raised the issue of Pawn America's pending application for a pawnbroker license. He acknowledged that

[i]n 2002, *the City Council and staff took a pretty good look at our pawnshop ordinance and made a variety of changes or amendments.* They lowered the number of licenses from three to two. And then they instituted a number of reporting requirements, if memory serves, and communication between law enforcement and pawnshops, which is not uncommon necessarily in terms of tracking inventory that comes in and stolen property and serial numbers and all of that kind of stuff. So, our cops and pawnshop operators work together via this ordinance, and *it's worked pretty well in that regard.*

At this Study Session, the City's Mayor stated his opposition to Pawn America's application: "*Here's my policy statement on it: Figure out a way to say 'no.'*" Council Member Basill again registered his opposition to Pawn America's application. ("*[M]y preference would be we have zero licenses.*") At the meeting, counsel for the City recognized that the proposed use of the Property met the current zoning requirements. ("*Right now, the pawnshops are a permitted use in the general commercial district and this property is zoned C-2, so it meets the zoning requirement.*") *Counsel for the city then proposed the idea of adopting a moratorium and zoning study to determine if the City wanted to adopt additional zoning regulations aimed at pawnshops.*

- The next day, the City developed a public announcement that the City Council would be considering an interim ordinance to study pawnshop zoning and would not issue any pawnbroker licenses while the interim ordinance was in effect. *The City then reached out to inform the citizens who had complained about the proposed Pawn America store* to inform them that the Council would consider adopting an interim ordinance and moratorium item at the next Council meeting.
- On September 26, 2007, Pawn America first learned of the City Council's intent to adopt an interim ordinance imposing a moratorium on new pawn stores within the City at the Council's meeting on October 1, 2007. In internal communications with the City Manager, the City's Communications Coordinator admitted that "*ijt will be very clear soon that it was this particular application that brought this to the forefront.*" *She questioned whether "there [were ] legal concerns, however, in acknowledging that the interim ordinance is related to a specific application."* On October 1, 2007, the City Council passed a resolution adopting a first reading of the interim ordinance (the "Interim Ordinance").

- Even though the Interim Ordinance had not received final council approval until October 8, it was sent to the newspaper for publication on October 3. But for this tweaking of the schedule, the Interim Ordinance would not have become effective until after the scheduled October 31 closing date for the purchase of the Property.

(See A.029-A.032 (emphasis added) (citations omitted).)

Moreover, it is also undisputed that in 2006, the only operating pawn store in the City, Excel Pawn, relocated to a residential neighborhood with notice to the City of that relocation, yet that operation of a pawn store in a residential neighborhood did *not* give rise to any study or proposed amendment of the City's comprehensive plan and/or controls. (A.060, A.165-A.167; Respondent's Br. at 28.)

In light of the statutory requirement that the interim ordinance be "for the purpose of protecting the planning process" and the *Almquist* requirement that the moratorium be "enacted in good faith and without discrimination," this Court may not simply defer to the City's adoption of the interim ordinance without consideration of the factual record. Rather, in considering the purpose of, and the bases for, the interim ordinance, this Court must view the entire record, including statements made at City meetings, by members of the City Council and Mayor. Moreover, the case of *Wedemeyer* is readily distinguishable from the case at bar and does not establish that the interim ordinance was enacted in good faith.

**1. The Express Statutory Requirement that an Interim Ordinance Must be for the Purpose of Protecting the Planning Process Requires More than Simple Deference to the City in this Case.**

The City argues that the interim ordinance was a legislative act and that this Court should grant deference to the City Council as long as a rational basis exists for the

City Council's decision. (Respondent's Br. at 17.) In effect, the City is saying that the judiciary should turn a blind eye to facts pertaining to the purpose for which an interim ordinance was adopted. In support of this argument, the City cites a group of cases that state common principles of judicial deference to legislative actions. *See, e.g., Honn v. City of Coon Rapids*, 313 N.W.2d 409, 414 (Minn. 1981) (citing *State by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978)); *see also White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982).

Pawn America does not dispute that, when reviewed under the federal and state constitutions, the actions of the legislative branch are commonly accorded deference and upheld under a rational basis test. In the case at bar, however, the City's interim ordinance must be reviewed pursuant to the specific requirements of Minn. Stat. § 462.355, subd. 4(a) and the case law requirements attendant thereto. That statute expressly requires consideration of the "purpose" for the interim ordinance, while this Court in *Almquist* held that a moratorium must be enacted "in good faith and without discrimination." 308 Minn. at 65, 245 N.W.2d at 826. Any meaningful consideration of the true purpose of the ordinance, and whether the City acted "in good faith and without discrimination," requires more than a mere analysis as to whether there was any conceivable rational basis for the City's actions. This Court must examine whether the interim ordinance in fact was adopted without discrimination and for the good faith purpose of protecting a legitimate planning process. As is reflected in decisions by this Court and the Court of Appeals respecting interim ordinances and other municipal

actions, such examinations of “purpose” and “good faith” necessarily require review of the entire factual record, rather than simple reliance on a city’s legislative pronouncements.

**2. The Statements of the Mayor and City Council Show that the Purpose of the Interim Ordinance Was to Prevent a Particular Project.**

Though the City relies heavily on self-serving statements by Council members and the Mayor, (Respondent’s Br. at 4-7), it nonetheless asserts that statements made by City Council members and the Mayor should not be considered in determining whether the purpose of the interim ordinance was legitimate. The City suggests that Pawn America is seeking to make a wide ranging review of the personal motives of individual council members. (Respondent’s Br. at 30.) On the contrary, Pawn America simply asserts that in the present case, where the “purpose” of the interim ordinance and the City’s “good faith” are at issue, this Court must consider the entire factual record, including statements of the City Council and Mayor—all of which were made in the course of official City business.

In *every* pertinent decision respecting interim moratoria, this Court or the Minnesota Court of Appeals has focused on the entire factual record to determine if the particular city in question actually was engaged in a bona fide planning process which justified a moratorium to protect that planning process. Thus, in *Almquist*, this Court relied on the evidence in the record that four separate developers had submitted proposals to the Town of Marshan, which at the time had no comprehensive zoning plan at all, thereby prompting Marshan to institute a study and adopt a moratorium:

We are of the opinion that the considerations which prompted adoption of the moratorium were matters of legitimate concern to the town board and justified their action. We are persuaded *on this record* that the board acted in good faith.

245 N.W.2d at 825 (emphasis added). Similarly, in *Duncanson*, the Court of Appeals distinguished *Medical Services* because the record reflected that Danville Township had no zoning ordinances and no basis for judging the desirability or the feasibility of the Duncansons' proposed facility and noted that the township and the Town of Marshan in *Almquist* "responded to dilemmas relating to land use by enacting temporary moratoria."

It is the good faith effort *demonstrated here*, to plan for orderly development that must, we believe, defeat any objection that this ordinance is directed at a single project.

*Duncanson*, 551 N.W.2d at 252 (emphasis added). Meanwhile, in *Wedemeyer*, the Court of Appeals noted that the parties had stipulated that the city enacted the subject freeze "out of concern for the propriety of pawnshops in the Community Service Districts" and relied on that stipulated fact in determining that the freeze was not targeted at Wedemeyer's application for conditional use. 540 N.W.2d at 543. Finally, in *Medical Services*, the Court of Appeals based its decision on a careful consideration of the entire record, including the fact that "the city [of Savage] enacted the moratorium only after Medical Services commenced legal action;" "Medical Services' proposed facility was the only pending project affected by the moratorium;" "Medical Services' facility was a permitted use under the existing Savage zoning ordinance;" and Savage

had prior opportunities to address and amend its zoning ordinance and had not done so. 487 N.W.2d at 267-68.

When determining the purposes of municipal actions in other cases, Minnesota courts have taken statements made by council members into consideration. For example, in *Thul v. State*, the Court of Appeals evaluated whether a city had a legitimate governmental purpose behind its ordinance. 657 N.W.2d 611, 617 (Minn. App. 2003). As part of its analysis, the Court of Appeals relied on the city council's discussion of the ordinance's purpose. *Id.* Similarly, in *Parronto Brothers Inc.*, the Court of Appeals considered the statements of a city council in assessing whether the reasons given by the city for a rezoning decision were legally sufficient. 425 N.W.2d 585, 590 (Minn. App. 1988).

The United States Supreme Court has evaluated the statements of city council members to determine whether a city's decision had an improper motive and whether the city was imposing burdens on an entity in a selective manner. For example, to determine whether the city had a proper motive for its ordinance, the Court considered statements by council members as to whether the city could somehow prevent a church from opening. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Relying on a number of statements by the members of the city council, the Court concluded that, despite the purported basis for the city's decision, the city had an improper motive and had applied its ordinance in a selective manner. *Id.* at 540-42.

While the City cites a number of cases to support its position that this Court may not consider the comments of the City Council members, those cases do not preclude

such consideration. For example, in *City of Erie v. Pap's A.M.*, the United States Supreme Court did not preclude consideration of statements by the city council. 529 U.S. 277, 292 (2000). Rather, the Supreme Court observed that, when the predominant purpose of an ordinance was constitutional, it would not strike down an ordinance merely on the basis of an alleged illicit motive. *Id.*

Similarly, neither *State v. Target Stores, Inc.* nor *Anderson v. City of St. Paul* prevents this Court from evaluating the *expressed* motivations of the Mayor and City Council members. See *State v. Target Stores, Inc.*, 279 Minn. 447, 461, 156 N.W.2d 908, 917 (1968); *Anderson v. City of St. Paul*, 226 Minn. 186, 204, 32 N.W.2d 538, 548 (1948). In both of those cases, this Court refused to delve into the private motives of the city council members or legislators. *Target Stores*, 279 Minn. at 461, 156 N.W.2d at 917 (refusing to take judicial notice of legislature's motive); *Anderson*, 226 Minn. at 204, 32 N.W.2d at 548 (refusing to inquire into motives of city council regarding prohibition of women working as bartenders). But Pawn America does not seek to conduct discovery of the personal, unexpressed motives of the City Council members or Mayor. Instead, it relies on the expressed statements of the City Council members and Mayor, all made at one of the City's public workshop meetings, to demonstrate the ordinance's true purpose. The statements are part of the undisputed record regarding the underlying purpose behind the City's interim ordinance. These statements, and the other undisputed facts in the record, establish that the interim ordinance was adopted for an improper purpose.

**3. *Wedemeyer* Is Distinguished from the Case at Bar and Has No Bearing on Whether the Interim Ordinance Was Adopted in Good Faith.**

The City places great significance on *Wedemeyer*, claiming that *Wedemeyer* is the most apposite of the Court of Appeals decisions and that *Wedemeyer* cannot be materially distinguished from the case at bar. (Respondent's Br. at 23-24.) Examination of *Wedemeyer*, however, demonstrates that the case has little bearing on the validity of the St. Louis Park interim ordinance.

*Wedemeyer* concerned a challenge to a preexisting Minneapolis ordinance that imposed a stay on the processing of all pending land use applications while the city council considered an interim ordinance. Vitally important is the fact that this ordinance was already on the books before plaintiff *Wedemeyer* ever came along. *See Wedemeyer*, 540 N.W.2d at 541. *Wedemeyer* applied for a conditional use permit to operate a pawn store within a community service zoning district on April 12, 1994. Three days later, on April 15, 1994, a member of the city council asked the city attorney to draft a moratorium on pawn stores, and the interim ordinance was introduced at a city council meeting. A preexisting city ordinance provided that, upon the earlier of the introduction of an interim ordinance to the city council or a request to the city attorney for the drafting of an interim ordinance, there would be a stay on the processing of all applications for approvals within the subject matter of the proposed interim ordinance. *See id.* (quoting Minneapolis Code of Ordinances § 534.470(c)(1) (1990).) The Court of Appeals found that the preexisting stay ordinance was valid and that application of the stay to *Wedemeyer* was not in bad faith or discriminatory. *See id.*

*Wedemeyer* is readily distinguished from the case at bar. First, *Wedemeyer* did not address the validity of an interim ordinance adopted under Minn. Stat. § 462.355, subd. 4(a). Second, while the stay in *Wedemeyer* was automatically imposed pursuant to the preexisting ordinance, the interim ordinance in the case at bar was ad hoc and specifically targeted Pawn America. There was no preexisting St. Louis Park ordinance that automatically imposed a stay in processing applications. Third, the parties in *Wedemeyer* **stipulated** that the stay was imposed “out of concern for the propriety of pawnshops in the Community Service Districts.” *Id.* On the basis of that stipulation, the *Wedemeyer* court concluded that the stay was imposed in good faith to promote comprehensive planning. *See id.* There certainly was no stipulation in the present case that the interim ordinance was adopted to protect the planning process.

In short, Minneapolis achieved a stay on processing of *Wedemeyer*’s application through a preexisting ordinance applicable to all applications, which stay was imposed for a legitimate purpose. The ad hoc stay in the case at bar is yet one more fact establishing that the interim ordinance and supposed “planning study” were merely components of a series of concerted actions to prevent the Pawn America store.

**III. IT WAS THE ILLEGAL INTERIM ORDINANCE ALONE THAT PREVENTED PAWN AMERICA FROM RECEIVING ITS PAWNBROKER LICENSE, AND PAWN AMERICA IS ENTITLED TO RELIEF.**

The City argues that Pawn America still had not satisfied the conditions for a license on October 8, 2007, when the district court denied Pawn America’s application for a writ of mandamus, or on October 22, 2007, when the district court denied Pawn America’s motion for a temporary restraining order. (Respondent’s Br. at 34.) The

City objects that: (1) the criminal background check had not been completed; (2) Pawn America merely held a lease rather than fee title; and (3) Pawn America had not received registration of land use. (*Id.* at 33-34.) As demonstrated in Pawn America's opening brief, Pawn America met all relevant requirements on September 28, 2007, when it demanded issuance of the pawnbroker license. (Appellant's Br. at 11-12.)

Even if the City is correct and Pawn America did not qualify for the license *before* the interim ordinance went into effect, Pawn America should still prevail. The record is clear that by mid-December 2007, after a long and unwarranted period of delay, the City's police department finally completed the background check and found no reason to deny Pawn America's pawnbroker license. (A.103-A.104.) With the closing on the purchase of the property by a Pawn America affiliate on January 7, 2008, any objection based on the lack of fee ownership vanished. (A.109.) Similarly, upon completion of that closing, the alleged need for registration of land use became moot.<sup>3</sup> Therefore, Pawn America complied with all of the City's requirements for a pawnbroker license on January 7, 2008—well before the permanent ordinance became effective on February 22, 2008.

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<sup>3</sup> According to the City, it was the lease that triggered the alleged need for registration of land use, and this requirement did not apply to a purchase. (Respondent's Br. at 33.)

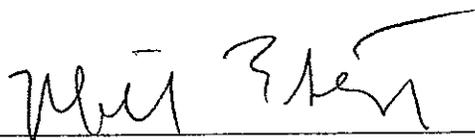
It was the illegal interim ordinance—and the illegal interim ordinance alone—that prevented Pawn America’s receipt of its pawnbroker license. Under the relevant principles discussed above, Pawn America is entitled to issuance of its pawnbroker license, notwithstanding the adoption of amended zoning controls during the pendency of the improper interim ordinance.

### **CONCLUSION**

The Court of Appeals decision should be reversed. The undisputed facts in the record establish that the City adopted the interim ordinance on pawn stores to prevent Pawn America from opening its business. The City violated Minn. Stat. § 462.355, subd. 4(a), which requires that an interim ordinance be adopted for the purpose of protecting a preexisting planning process. On the contrary, the City adopted its interim ordinance in bad faith and for a discriminatory purpose. Pawn America is entitled to an order declaring that the interim ordinance was invalid and directing the City to issue it a pawnbroker license.

January 19, 2010

Respectfully submitted,



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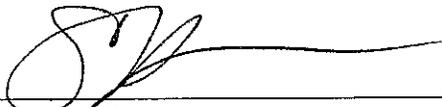
**CERTIFICATE OF COMPLIANCE**

The undersigned, Matthew B. Seltzer 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 6077 words. The Brief complies with the typeface requirements of the rule and was prepared, and the word count was made, using Microsoft Word 2003.



Matthew B. Seltzer

Subscribed and sworn to before me  
on January 19, 2010.



Notary Public

