

No. A08-1697

STATE OF MINNESOTA
IN SUPREME COURT

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

Appellant,

v.

City of St. Louis Park, Minnesota,

Respondent.

RESPONDENT'S BRIEF
AND
APPENDIX

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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

1. Can the Court compel the City to issue a pawnbroker's license in violation of its current Zoning Ordinance?

The Court of Appeals upheld the District Court determination that Appellant is not entitled to the license because the property cannot be used as a pawnshop under the city's current zoning ordinance.

Apposite Authorities:

State ex rel Rose Bros. Lumber & Supply Co. v. Clousing, 198 Minn. 35, 268 N.W. 844 (1936)

Property Research and Dev. Co. v. City of Eagan, 289 N.W.2d 157 (Minn.1980)

2. Was the Interim Ordinance validly enacted?

The Court of Appeals upheld the District Court determination that the Interim Ordinance was validly enacted.

Apposite Authorities:

Minn. Stat. 462.355, Subd. 4

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

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 a Judgment entered on August 4, 2008 in Hennepin County District Court pursuant to the Order on Cross-Motions for Summary Judgment, filed by the Honorable Denise D. Reilly on August 1, 2008, in which the court granted Respondent City of St. Louis Park summary judgment dismissing Pawn America’s Complaint in its entirety.

This action was commenced on October 4, 2007 as a Mandamus action. On October 8, 2007, the District Court denied from the bench Pawn America’s Petition for a Writ of Mandamus to require the City to issue a pawnbroker’s license.

On October 10, 2007, Pawn America amended its Mandamus Petition to include a Complaint for Declaratory and Injunctive Relief relating to the City’s adoption of an Interim Ordinance on October 8, 2007 which established a moratorium on pawnshops effective October 26, 2007.

On October 10, 2007, Pawn America also filed its Notice of Motion and Motion for a Temporary Restraining Order seeking to enjoin the City from enforcing the Interim Ordinance.

On October 22, 2007, the District Court entered its Order and Memorandum denying Pawn America’s Motion for a Temporary Restraining Order. Pawn America did not pursue a Temporary Injunction.

The parties subsequently filed cross-motions for summary judgment resulting in the District Court’s August 4, 2008 Order and Judgment in the City’s favor.

STATEMENT OF FACTS

City Council Initiates Planning Study and Adopts Interim Ordinance

On September 24, 2007 at the St. Louis Park City Council's regular work session the City Manager told the seven-member Council about a pending license application by Pawn America to establish a pawnshop at [REDACTED], the then current site of the Trestman Music Center. (A081) After discussing the matter, City staff proceeded with the preparation of a proposal for a planning study and Interim Ordinance to be considered at the next regular City Council meeting. (A085)

During the brief discussion at the September 24, 2007 work session, Mayor Jeff Jacobs made one comment. He stated: "Here's my policy statement on it: Figure out a way to say no. Anyone else have anything different about it, I mean. I don't know, I think that's a terrible location for it. That's just my take on it." (A081, 082)

At the October 1, 2007 City Council meeting, the Council, after taking public comment, took the following actions: adopted first reading of an Interim Ordinance temporarily prohibiting pawnshops and set second reading for October 8; adopted a resolution directing the City planning staff to conduct a study to determine how pawnshops should be regulated within the City; and, directed staff to immediately stop the further processing and approval of any pending or new applications for a pawnshop license. (A141)

At the October 1 Council meeting, interested citizens, supporters of Pawn America and Pawn America's attorney provided extensive comments on the proposed planning

study and Interim Ordinance. (RA30-49) The Mayor and Councilmembers made the following comments:

Councilmember Finkelstein:

Well, I've gotta a couple of them, and first of all, I like pawn shops. I like shopping at them. Don't tell my wife what I bought for her at them. I know Pawn America is a fine operation, except for that theme song that I can't get out of my head some mornings, but I don't think the moratorium is a bad idea. I think it's a good one. Quite frankly, we're a middle-age suburb that's in the midst of a renaissance. We've spent millions of dollars trying to improve our neighborhoods and improve our shopping areas. Putting in new streetscaping, new activities. We were talking later on earlier today about spending \$400 million for the Duke property proposal. I think it makes sense to do a moratorium because there are a lot of things that we don't know. Not just about this one neighborhood, but the city as a whole. Among other items that I would like to study include 1) the limitation on then number of pawn shops; 2) the limitation and the use of sale of items in pawn shops; 3) limitation on the use and sale of guns in pawn shops; 4) limitation on the locations of pawn shops; 5) limitation of pawn shops that are immediately adjacent to neighborhoods. And we've discussed this, not just for pawn shops, but we've talked about it before for example, when we talking about liquor stores, being within neighborhoods or being next to schools; and 6) I'd also like to study whether we should be considering a limitation on the number of hours or the days the pawn shops could be open. Quite frankly, if we were talking about your corporate headquarters, we'd love to see you here. Come on down. But this issue is bigger than just Pawn Shop America on Excelsior Avenue, it's about what some people in the past had seen as a tired suburb rejuvenating itself and keeping it whole and I think this is appropriate. We haven't made up our mind totally. We need to study this and we're entitled to do that.

(RA42)

Councilmember Sanger:

I have to say I agree with the comments that Councilmember Finkelstein has made and I think this is an appropriate items for study but I also think that the record needs to be clarified. There is something you [Pawn America's attorney] said that I think cannot go unchallenged counsel. And that is this. This proposed moratorium applies to the whole city. This is not intended to apply just to your proposed pawn shop on Excelsior Boulevard and, um, I think that you have mischaracterized and perhaps

misunderstand the intent of this moratorium. From my perspective, it's important that we study this for the health of our entire community.

(RA42)

Councilmember Basill:

So we're looking at this community long-term. Ah, I think we have to do that long-term and we would be remise if we didn't and that's why I'll be in support of us looking at this moratorium and ah, I think the resident who spoke earlier pointed it out very well that this isn't regarding this property, this is a city-wide issue that we'll be looking at and I don't know if you heard him speak earlier or what time you can in, but I think he pointed that out very well that this goes beyond this property. This is something we have to look at as a whole community.

(RA43)

Councilmember Paprocki:

Okay. From my own personal experience, what has always baffled me driving down Excelsior and I see Fantasy Gifts and I think, what is this business doing here in a residential area. This doesn't make sense. And while Pawn America, and that's a good step up from Fantasy Gifts, I'd still be wondering what is Pawn America doing backing up against a residential area. Um, and, if not there, then where. I have a gut feel that this is a wrong place for a pawn shop. Where can we allow them. Well I think we need to do some more thinking about it. And that's what we're doing. We're not saying No you can't be there. We're saying No, we need to think about this some more. Because whatever decision we make, you're probably going to be there for a long time and so that's why I think we ought to look at this and deliberately go through where does a pawn shop make sense in St. Louis Park before we have potentially a long-term business resident in the City.

(RA45)

Councilmember Omodt:

Just quick. I'm going to be voting in favor of the moratorium as well. I think anybody that's watched our Council over the years, um, realizes that we kind of live by the mantra of measure twice, cut once and I think that applies not only just here but when we looked at liquor licenses, when we looked at lot splits. There is a lot of times that Council has asked for more study, more information, to separate the rumor from the innuendo and the this and the that and everything else and try to make a rationale decision on

it. And I think this is one of those cases. Not just this, but looking at the issue in general. Last time we looked at this was a good, five years ago. Something we need to look at again as Phil says, as the City kind of is rejuvenating itself and whether this stuff all still makes sense. So I'll be supporting the moratorium. Look at it with open eyes, open mind and say What can we find out from this and where do we take this.

(RA46)

Councilmember Carver:

Now, the most important thing here is that we're not making a decision tonight. Tonight what the question is about is the question of time. And what the ordinance is, is a temporary ordinance that will put a moratorium on any pawn shop anywhere within the city. And so, basically, we're going to look at everything that has been said tonight, and I'm sure much, much more. We're going to hear from a whole lot of people and we're going to gather the information, gather the evidence, and be able to make a decision at that point. And I can't tell you what that decision is going to be. Maybe it's going to be that this is a great location and this is where Pawn America is going to end up next in St. Louis Park.

(RA47)

Mayor Jacobs:

Okay. Any additional discussion at this point of that motion. And let me kind of weigh in a little bit on this because I've been sitting here listening. This by the way was a very respectful debate. I want to thank you all for that because I know emotions run very high on both sides of this. This is a difficult issue and one of the things that I heard tonight was that everybody that spoke, talked about reaching a level of understanding of the way the other side of this debate is thinking and people I think used the term you had valid concerns....well, I'm going to have to sit here and think about it for awhile until I figure it out. Um, that frankly, is what I think we gotta do. And that's what I'm hearing Council talk about. And I do that with the full understanding that I know that that's going to have an impact on this pending sale. It is going to have an impact on the amount of time that our staff spends on this. It's going to have an impact on where pawn shops go. May not ultimately. But I think ultimately we're going to have to sit and think about this till we figure out what's the right thing to do. Having said that, I guess that's kinda where I am at this point. We gotta think about this a little bit till we know what we're doing.

(RA51)

On October 8, 2007, the City Council adopted Interim Ordinance No. 2343-07 which was published on October 11 and went into effect 15 days later on October 26 in accordance with the St. Louis Park City Charter. (Add. 29)

The Interim Ordinance contains the following statement of its Findings and

Purpose:

There are substantial concerns that the current City zoning ordinance provisions relating to pawnshops do not adequately address issues relating to pawnshops, such as the appropriate locations and the conditions under which they may be allowed within the City, including compatibility with existing uses in the area. There are also concerns about the land use impacts of the combination of pawnshop uses with other uses at the same location such as a secondhand goods store, precious metal dealer, and banking and/or lending type uses. As a result of the important land use and zoning issues cited above, the City Planning staff will conduct studies for the purpose of consideration of possible amendments to the City's official controls to address the issues concerning pawnshops. The City finds that this Interim Ordinance must be adopted to protect the planning process and the health, safety and welfare of the citizens.

(Add. 29)

Staff Conducts Planning Study and Council Adopts Amendments to Zoning Ordinance

The last comprehensive review of the City's zoning ordinance took place in the early 1990s. (RA24) The City had never done a zoning study to determine if there should be any additional restrictions to ameliorate land use impacts of pawnshops, whether freestanding or combined with payday lending operations, secondhand goods sales and other retail functions. (RA25) In 2002, the City police department initiated an amendment to the pawnbroker licensing ordinance to require a more sophisticated

reporting system called the Automated Pawn System (APS) to track stolen property.

(RA25)

After the Council's October 1, 2007 resolution directing the planning study, the City planning staff commenced work on the project. The study included a review of City ordinances, ordinances from other cities, literature and other information on pawnshops in general including operations, trends and impacts on surrounding properties and police data. (RA25-26, 69-94)

The study's conclusions included the following: 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)

On December 5, 2007, the City Planning staff completed the pawnshop zoning study. (RA69) On January 2, 2008, the City's Planning Commission held a public hearing on the study and the planning staff's proposed amendments to the Zoning Ordinance. (RA65)

On February 4, 2008, the City Council adopted Ordinance No. 2349-08 which went into effect on February 22, 2008. (RA61-63) The ordinance, among other thing, amends the Zoning Ordinance to make pawnshops conditional uses, provides a separation

distance between pawnshops and other businesses such as gun shops, currency exchanges and sexually-oriented businesses, prohibits the establishment of a pawnshop within 350 feet of any residentially zoned property, prohibits firearm transactions and establishes performance standards relating to appearance and operation. (RA61-63)

The property owned by Appellant at 5600 Excelsior Boulevard directly abuts residentially zoned property. (RA60) The St. Louis Park Zoning Ordinance now prohibits the operation of a pawnshop on Appellant's property. Interim Ordinance No. 2343-07 terminated on February 22, 2008 when Ordinance No. 2349-08 went into effect. (RA63)

Pawn America's License Application

On June 7, 2007, Pawn America applied for a pawnbroker's license. (A108) Pawn America's proposed business also included a secondhand goods store, precious metals dealer and an industrial loan and thrift company operating a payday lending outlet. (A127) When Pawn America's attorney submitted the license application, he also submitted a purchase agreement and represented to the City that Pawn America would close and have possession of the building on October 31, 2007.¹ (A107, 111-123) The building was then and continued to be occupied exclusively by the Trestman Music Center when the Interim Ordinance went into effect on October 26. (RA20)

At the time Pawn America's attorney submitted its pawnbroker's business license application to the City's Inspection Department, which handles the issuance of business

¹ The building was actually being purchased by PAL Holdings, LLC, with Appellant Pawn America as a proposed tenant in all or a portion of the building which would also be occupied by a Payday America outlet.

licenses, he also obtained a letter on a form prepared by the attorney, from the City's Community Development Department relating to the zoning status of the property.

(A127) In the June 6, 2007 letter, Assistant Zoning Administrator Gary Morrison confirmed that the property is zoned C-2 and that a pawnshop is an allowed use in the district. Morrison also stated in the letter that a separate Registration of Land Use Application containing additional information must be submitted before he could determine if the specific use of the property as a combination pawnshop, secondhand goods store, precious metals dealer and industrial loan and thrift company met all zoning requirements such as parking, density and setbacks. (A127-128)

In mid July, Pawn America's attorney asked licensing supervisor Ann Boettcher about the status of the license application. (A108) Boettcher in a voicemail responded that everything looked good but emphasized that the license cannot be issued until the licensee is physically in possession of the building. She stated:

A lot of times for a new business we don't actually physically issue that license until we know they are going to be doing the opening. So that means that if you are going to do any kind of construction in there with building permits, electrical, plumbing, mechanical, any type of work like that, I don't issue a license until that all is taken care of.

(A133)

Boettcher did not order a criminal background check from the police department until September 24, 2007 when she became aware of the requirement. The City Clerk's office previously handled pawnshop licenses and she was new to the process. (RA18) She then sent a memorandum to the police department stating:

We need the background check back by October 12, 2007 if possible. The company will be taking possession of the building on October 31, 2007, with a license issuance occurring shortly after that date, if all requirements are met.

(A105)

After Pawn America received notice of the City Council's intent to consider the Interim Ordinance on October 1, Pawn America submitted its Registration of Land Use Application for the first time on Friday, September 28 and demanded immediate approval. (RA16, A283) The required floor plan information was not submitted until October 2. (RA16) Pawn America's attorneys also presented a lease and sublease purportedly commencing that same day on September 28, and running through the date of closing on the sale of the property on October 31. (A297-311) The September 28 submission by Pawn America's attorney stated that Pawn America "plans to open for business on Monday, October 1." (A283) Contrary to that statement, Trestman Music Center was fully operational and was not moving from the building until October 31.

(RA20)

On October 1, the City Council directed staff to discontinue any further processing or approval of any pending or new applications for a pawnshop license. (A141) On October 8, 2007, the District Court denied Pawn America's application for a Writ of Mandamus directing the City to issue the pawnbroker's license. (Tr.36) At the hearing, Pawn America's attorney told the District Court that if the City Council adopted the Interim Ordinance that evening, Pawn America would be filing an application for a

Temporary Restraining Order the next day seeking to enjoin enforcement of the ordinance. (Tr.36)

Anticipating that the matter would be before her the following week, the District Court directed the City to keep things moving by processing the criminal background check in case the Court ended up enjoining the enforcement of the Interim Ordinance. (Tr.36-38) The Court agreed that the City was not in a position to process the Registration of Land Use Application relating to the parking and other specific requirements since it was unclear how the building would be used until Pawn America was in possession. (Tr. 37-38)

On October 9, the police chief assigned an officer to work on the criminal background check. (A103) On October 22, the Court issued its Order denying Plaintiff's motion for a Temporary Restraining Order. The Interim Ordinance went into effect on October 26.

ARGUMENT

I. The Court cannot compel the City to issue a pawnbroker license in violation of its current Zoning Ordinance.

In *State ex rel Rose Bros. Lumber & Supply Co. v. Clousing*, 198 Minn. 35, 268 N.W. 844 (1936), a lumber company applied for a building permit to replace a structure damaged by fire. The Minneapolis City Council adopted a motion forbidding the issuance of any permits for secondhand lumber yards and sheds until given further consideration by the Council, in essence a temporary moratorium. After the action was initiated in District Court, the City Council passed an ordinance prohibiting such lumber yard buildings without a permit issued by the Council. In denying the lumber company's mandamus petition, the Supreme Court held that the lumber company had no vested right to reconstruct the building. The Court stated:

The issue raised is whether respondent had any right to have [the permits] issued at the time of the hearing on the question of the peremptory writ. *Whether appellant was right or wrong in refusing issuance of permits prior to the passage of the ordinance is of no importance.* He cannot be compelled by mandamus to issue them if at the time of the hearing on the peremptory writ, he had neither the legal right nor legal duty so to do. (emphasis added).

Id., 268 N.W. at 846.

In *Property Research and Dev. Co. v. City of Eagan*, 289 N.W.2d 157 (Minn. 1980), the city denied the property owner's application for plat approval. Plaintiff brought a mandamus action to compel approval. Prior to trial the city amended its zoning ordinance in a manner which prohibited the proposed plat. The Supreme Court dismissed the mandamus action. The Court stated:

The important fact in this appeal is that prior to trial the Eagan zoning ordinance was amended so as to preclude the plaintiff from building single-family dwellings on its R-4 zoned land. There is no vested right in zoning, *Almquist v. Town of Marshan*, 308 Minn. 52, 245 N.W.2d 819 (1976); R.A. Vachon & Son, Inc. v. City of Concord, 112 N.H. 107, 289 A.2d 646 (1972); 4 R. Anderson, American Law of Zoning, 97 (2nd 1977); Annot., 50 A.L.R.3d 596, 607 (1973); therefore, the plaintiff lost whatever right it may have had to approval of the plat when the zoning ordinance was amended.

... The order compels the council to approve a preliminary plat for which it cannot issue building permits under its existing zoning ordinance. No other landowners in the city of Eagan could receive a writ of mandamus allowing them to build on their property in contradiction of the zoning laws even though they had planned to do so prior to the change in the zoning ordinance. *Even assuming, but not deciding, that the city improperly denied approval of the plat, mandamus did not lie in this case.* (emphasis added).

Id., 289 N.W.2d at 158.

In *Rose Cliff Landscape Nursery Inc. v. City of Rosemount*, 467 N.W.2d 641 (Minn. App. 1991), Appellant reviewed its plans for a retail commercial greenhouse and landscape nursery with city staff. Appellant then closed on the purchase of the property and applied for a building permit and site plan approval. The staff recommended approval, but the Planning Commission denied the permit. The City Council subsequently amended the zoning ordinance to prohibit retail nursery sales. Based upon the Supreme Court's holdings in *Rose Bros. Lumber* and *Property Research*, the court stated:

Here, appellant lost whatever right it may have had to approval of its building permit application and site plan when the zoning ordinance was amended by the Rosemount City Council. *Notwithstanding the court's finding that respondent's refusal to issue the permit was arbitrary and capricious, mandamus does not lie as an appropriate remedy.* (citation omitted) (emphasis added).

Appellant's right to rely on the initial ordinance was subordinate to the city council's police power to enact a different zoning regulation. We conclude the trial court correctly determined that appellant had no vested right to construct its project and that appellant's remedy, if any, did not lie in a mandamus action.

Rose Cliff Landscape Nursery, Inc., 467 N.W.2d at 644.

Here, Pawn America is asking the Court for an order directing the City to issue it a pawnbroker's license. Pawn America has no vested right to the continuation of the previous zoning regulations which allowed a pawnshop as a permitted use. The use is not allowed under the current Zoning Ordinance. The Supreme Court's holdings in *Rose Bros. Lumber* and *Property Research* are controlling. The City cannot be ordered to allow the operation of a pawnshop in violation of its current Zoning Ordinance.

Pawn America relies on *Alexander v. City of Minneapolis*, 267 Minn. 155, 125 N.W.2d 583 (1963) where the city had a nine year old "hold order" directing the building inspector not to issue any building permits for the property. *Alexander* was decided in 1963 without any discussion of the Supreme Court's holding in *Rose Bros. Lumber* and before the *Property Research* decision. *Alexander* was also decided prior to the adoption of the 1965 Municipal Planning Act, Minn. Stat. §462.351, et seq. In *Almquist* the Court, emphasizing the nine year hold order and the subsequent adoption of the Municipal Planning Act, stated that any suggestions in *Alexander*, and other prior cases, that a moratorium is per se invalid was "simply dicta." *Id.*, 245 N.W.2d at 824.

There is no substantive difference between a mandamus and a mandatory injunction compelling the issuance of a pawnbroker's license included as part of this action. In *Curry v. Young*, 285 Minn. 387, 173 N.W.2d 410 (1969), plaintiff brought an action

to compel the City of Minneapolis to grant a setback variance and building permit. The Court stated:

Plaintiffs contend that they are seeking relief by way of a mandatory injunction. Whether we call the proceeding mandamus or a mandatory injunction has little significance. In State ex rel. Sholes v. University of Minnesota, 236 Minn. 452, 463, 54 N.W.2d 122, 129, we discuss the difference between the two. There we said: ‘Where the decision is right as a matter of law, this court will affirm.’

Id., 173 N.W.2d at 413.

See also *Heckler v. Lapid*, 463 U.S. 1328, 1333 (1983) (mandatory injunction like a mandamus is an extraordinary remedial process); *Stern v. South Chester Tube Co.*, 390 U.S. 606, 609 (1968) (distinction between mandamus and a mandatory injunction “seems formalistic in the present day and age”); *Miguel v. McCarl*, 291 U.S. 442, 452 (1934) (mandatory injunction is in effect equivalent to a writ of mandamus); *Morrison v. Work*, 266 U.S. 481, 490 (1925) (mandatory injunction, like a mandamus, is an extraordinary remedial process).

II. The City Council authorized the planning study prior to the adoption of the Interim Ordinance.

Pawn America for the first time before the Court of Appeals made the technical argument that the planning study must be authorized at a city council meeting prior to the meeting at which the council adopts the Interim Ordinance because Minn. Stat. §462.355, Subd. 4(a) says “has authorized a study to be conducted.”

There is no need for the Court to engage in a grammatical game of slice and dice since the argument is factually incorrect. The planning study was authorized at the October 1 City Council meeting when the first reading of the Interim Ordinance occurred. The Interim Ordinance was not adopted until the October 8 meeting. The ordinance was

published on October 11 and did not go into effect until October 26. The study was authorized before the Interim Ordinance was adopted.

Pawn America at the beginning of this proceeding in its Memorandum in Support of Motion for Temporary Injunction, dated October 10, 2007, was much more precise and accurate in its description of the Interim Ordinance adoption process than it is before this Court. In its October 10, 2007 Memorandum, Pawn America describes the October 1, 2007 action as the first reading and states that the ordinance “had not been adopted and was not effective” at that time, and that “on October 8, 2007, the City adopted the moratorium ordinance.” (Memorandum, p.3)

III. The City Council appropriately utilized the legislatively authorized Interim Ordinance process.

A. The City’s adoption of the Interim Ordinance is a legislative act which must be upheld.

The adoption of an Interim Ordinance is a legislative action. In adopting or amending an ordinance, a municipality acts in a legislative capacity. *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)). In *Honn*, the Supreme Court stated:

A city council has broad discretion in legislative matters, and even if the city council's decision is debatable, so long as there is a rational basis for what it does, the courts do not interfere.

Honn, 313 N.W.2d at 415. The Supreme Court has further emphasized the judiciary's obligation to accord strong deference to municipal decisions:

The mere fact that the trial court might have reached a different conclusion, had it been a member of the council, does not invalidate the judgment of the City officials if they acted in good faith and within the broad discretion accorded them by the ordinance itself.

The setting aside of routine municipal decisions should be reserved for those rare instances in which the City's decision has no rational basis. Except in such cases, it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.

White Bear Docking & Storage, Inc. v. City of White Bear Lake, 324 N.W.2d 174, 176 (Minn. 1982).

B. The legislature has designed the Interim Ordinance process to enable a municipality to act quickly to place a moratorium on one or more uses while it conducts a study.

Minn. Stat. § 462.355, Subd. 4 authorizes a municipality as part of a study of its zoning regulations to adopt an Interim Ordinance for the purpose of protecting the planning process. The Interim Ordinance may regulate, restrict or prohibit any use, within all or a part of the jurisdiction for a period not to exceed one year, which may be extended for up to an additional 18 months.

Unlike the adoption of an amendment to a city zoning ordinance, there is no required published notice or public hearing to initially adopt an Interim Ordinance temporarily prohibiting certain uses while the city studies its zoning regulations.

Duncanson v. Board of Supervisors of Danville Twp., 551 N.W.2d 248, 250 (Minn. App. 1996). The only exception to this was enacted by the legislature in 2005, when the requirement of a formal public hearing and ten-day published notice provision was added to the statute in situations where the Interim Ordinance would prohibit livestock

production facilities. Minn. Stat. § 462.355, Subd. 4(b) (2006); 2005 Minn. Sess. Law Serv. 1st Sp. Sess. Ch. 1 (S.F. 69) 60 (WEST).

Minn. Stat. § 462.355, Subd. 4(c) also addresses the issue of what categories of pending approvals can or cannot be impacted by an Interim Ordinance. Specifically the statute provides that an Interim Ordinance may not halt, delay or impede a subdivision that has been given preliminary approval or extend the time deadline for agency action under Minn. Stat. § 15.99 (the so-called 60 day rule relating to zoning matters).

Clearly the Interim Ordinance process is intended to allow a municipality to act quickly to protect the planning process by putting a halt to one or more proposed projects so that the city can study its zoning regulations before the use is already in place and there to stay. *Almquist*, 245 N.W.2d at 826 (reason for permitting moratorium ordinances “are to prevent nonconforming uses which might destroy the comprehensive zoning plan.”).

As discussed below, virtually all the cases in Minnesota involving Interim Ordinances are situations where a new business or other use is coming into the community, the City Council or Township Board looks at its zoning regulations, realizes it has gaps or deficiencies and places a moratorium or time-out on the use in order to see if additional regulations are appropriate. That is exactly what happened here.

C. The facts in *Medical Services* are readily distinguishable.

Appellant relies heavily upon the case of *Medical Services Inc. v. City of Savage*, 487 N.W.2d 263 (Minn. App. 1992), the one Court of Appeal’s decision which struck

down an Interim Ordinance. The facts in *City of Savage* are an anomaly, and have been distinguished in subsequent cases. In *Duncanson*, the Court stated:

While it is true that the Duncansons' proposed feedlot was the only project known to be affected by the Danville moratorium, *Medical Services* is readily distinguishable on other grounds. First, the city council in *Medical Services* did not enact its moratorium until August 13, 1991, even though the city council had been aware of Medical Services' general plans to construct an infectious waste facility since at least 1989. * * *

On June 13, 1991 the city council considered and rejected a proposed amendment to the zoning ordinance that would have made an infectious waste facility a conditional use, but the council did not direct city staff to conduct further study concerning the treatment and disposal of infectious waste * * *.

The city enacted the moratorium only after Medical Services commenced legal action [on June 24, 1991]. The moratorium was enacted after a closed executive session meeting of the council called to discuss the law suit.

Here the moratorium was enacted at an open regular meeting of the board, only a month after the board had first learned of the Duncanson's proposal and two weeks before the Duncansons brought their declaratory judgment action.

Id. 551 N.W.2d at 267.

A critical distinction between the Savage City Council's actions and the St. Louis Park Council actions in this case is the fact that the Savage City Council never initiated a planning study on February 28, 1991, March 14, 1991 or June 13, 1991 even though it had before it specific items raising the issue of how the city's zoning ordinance did or did not regulate an infectious waste processing facility.

At the February 28 meeting, the Savage City Council considered whether an infectious waste facility would qualify as a hazardous waste facility allowed by special permit. The Council requested a legal opinion from the city attorney.

At the March 14, 1991 meeting, the Savage City Council rejected Medical Services' special permit application based on the city attorney's opinion that the proposed facility did not fit within any section of the zoning ordinance. However, as the Court of Appeals noted, the City Council did nothing to address this problem with its zoning ordinance.

On June 13, the Savage City Council considered and rejected a proposed amendment to the zoning ordinance that would have made an infectious waste facility a conditional use, but, as the Court of Appeals stated:

The council did not direct city staff to conduct further study concerning the treatment and disposal of infectious waste in industrial districts until it enacted the moratorium on August 13, 1991. In the meantime, Medical Services commenced this declaratory judgment action on June 24, 1991.

Medical Services, 487 N.W.2d at 267.

On these three occasions, the Savage City Council had the issue staring it in the face and took no action to initiate a planning study relating to zoning regulations of infectious medical waste facilities. The council did not take that step until seven weeks after it had been sued, after a closed session with its attorney to discuss the litigation and at the same time it adopted the Interim Ordinance.

The St. Louis Park City Council, on the other hand, first learned of the pending Pawn America project on September 26, 2007, promptly identified concerns it had with the lack of any specific zoning regulations relating to pawnshops and on October 1 adopted a resolution directing that a planning study be done. The Interim Ordinance was

adopted on October 8 and went into effect on October 26, with the planning study well under way by that time.

Contrary to Pawn America's assertions, the St. Louis Park City Council, the City's legislative body, was not aware of the pending Pawn America project until September 26. The City Manager was also unaware of it until a few days before that. Prior to that it was an administrative licensing matter. There is a quantum difference between a licensing process and the discretionary decision-making process before the City Council that was taking place in *Medical Services*.

Contrary to Pawn America's assertions, the "City" did not evaluate whether the number of pawnbroker's licenses could be reduced before deciding to consider a moratorium. One councilmember asked the city attorney that question. That was it. The Council as a body did nothing. This is another example of Pawn America's attempt to draw this Court into irrelevant, ad hoc fact finding concerning individual councilmember motives.

Contrary to Pawn America's assertions, the St. Louis Park City Council did not have the issue of pawnshop zoning regulations before it in the run up to the Interim Ordinance as was the case in *Medical Services*. Five years earlier, the police department had initiated a change to the licensing ordinance to incorporate the Automated Pawn System requirement. There was nothing else until the September 26, 2007 work session.

It is a fact of life as shown by *Almquist* and the Court of Appeals' decision relating to Interim Ordinances that deficiencies in a zoning regulation many times are not identified until a specific project is proposed. That is exactly why the legislature,

consistent with the fact that a property owner has no vested right in a particular zoning regulation, granted municipalities the broad authority to stop a project while it considers the initial adoption of or an amendment to its zoning regulations or other official contracts.

The only similarity between *Medical Services* and this case, like the other reported cases, is that one pending project was affected by the moratorium. Neither the Supreme Court in *Almquist* nor the Court of Appeals in *Medical Services* holds that an Interim Ordinance that impacts only one project is invalid. What made the Savage City Council's conduct arbitrary and capricious, in the Court's opinion, was the Council's repeated decision not to initiate a planning study and its adoption of the Interim Ordinance seven weeks after *Medical Services* sued the city asserting that the existing ordinance allowed its facility.

The most apposite Court of Appeals' decision to St. Louis Park's enactment of this Interim Ordinance is *Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539 (Minn. App. 1995) which also involved an Interim Ordinance relating to pawnshops. *Wedemeyer* had a pending pawnshop zoning application. As in this case, the city initiated a process to adopt an Interim Ordinance pursuant to Minn. Stat. § 462.355, Subd. 4 and also placed a hold on *Wedemeyer's* pending application. Citing *Carl Bolander & Sons, Inc. v. City of Minneapolis*, 378 N.W.2d 826, 830 (Minn. App. 1984), the *Wedemeyer* court held that preserving the status quo pending further study of comprehensive zoning plans constitutes "good faith." The court stated:

Minneapolis Code of Ordinances section 540.470(c)(1), freezing conditional use permit applications while the city council considers ordinances affecting the area or subject matter of the permit application, is a valid municipal act. The stay of Wedemeyer's conditional use permit application for a nonconforming use during the city council's consideration of a moratorium ordinance on new pawnshop conditional use permits in Community Service Districts was a valid municipal act.

Wedemeyer, 540 N.W.2d at 543.

Wedemeyer cannot be distinguished in any material way from this case. The Minneapolis City Council put a stay on Wedemeyer's pending pawnshop application while it considered the adoption of an Interim Ordinance relating to pawnshops. The Court held that preserving the status quo pending further study of zoning plans constitutes "good faith" and that the stay of Wedemeyer's application was "a valid municipal act", *Id.* The Court stated:

Minn.Stat. § 462.355, subd. 4 is permissive; it does not prohibit less formal approaches. The statute permits Interim Ordinances regulating, restricting, or prohibiting any land use or development. Minn.Stat. § 462.355, subd. 4. The Minneapolis ordinance merely freezes applications pending decisions on moratorium ordinances. MCO § 534.470(c)(1). The statute and the ordinance do not conflict; they provide different procedures that yield different results. The ability of the city to stay permit applications protects the integrity of the city's planning process and complements rather than exceeds the authority of the statute.

Id. at 542.

Here, the St. Louis Park City Council likewise placed a brief stay on processing pending pawnbroker license applications and subsequently adopted an Interim Ordinance to preserve the status quo during a planning study, which the City then promptly proceeded to perform. Appellant's assertion that the facts of this case parallel *Medical Services* and not *Wedemeyer* is simply wrong.

D. Minn. Stat. § 462.355, Subd. 4 is not limited to the initial adoption of a comprehensive plan.

Pawn America makes much of the fact that *Almquist* involved a township that had not done any significant comprehensive planning. Pawn America also attempts to distinguish *Duncanson* because it likewise involved an unsophisticated township considering the initial adoption of a zoning ordinance.

In *Almquist* the Supreme Court upheld the moratorium even though there was no specific statutory authority holding that “where a municipality enacts 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 completed. *Id.* 245 N.W.2d at 825.

The legislature subsequently gave municipalities specific statutory authority. Minn. Stat. § 462.355, Subd. 4 allows the use of an Interim Ordinance when a municipality is considering either the adoption or amendment of its comprehensive plan or official controls. The statute allows the use of an Interim Ordinance by communities, presumably smaller ones, without comprehensive plans in place, and by communities that have done comprehensive planning but may need to amend their official controls.

Wedemeyer involved the City of Minneapolis with its sophisticated planners and zoning ordinance, yet there was still the need to study regulations relating to pawnshops. Large communities have more planning resources but also typically have much more diverse and sophisticated activities to regulate compared to their more rural counterparts. A rural township may get one atypical development proposal every couple years, while a

first ring suburb like St. Louis Park has a steady stream of ever changing development and redevelopment activity. In both settings, the need for a time out to perform planning studies is important and authorized by statute and case law.

In sum, it is crystal clear that the Interim Ordinance process allows a municipality to put a halt to pending development in order to take a time out and study its zoning regulations. The statute itself does not require any formal published public notice or public hearing to initially adopt an Interim Ordinance (with the recent exception pertaining to livestock production).

The legislature could have excluded all pending zoning applications from the restrictions imposed by an Interim Ordinance. It did not. The legislature could have required published notice and formal public hearings. It did not. Adopting an Interim Ordinance to stop a project while a planning study is conducted is entirely consistent with, and in fact supported by, the long line of cases holding that a property owner has no vested right to the continuation of a particular zoning classification. *Rose Bros. Lumber*, 268 N.W. at 849; *Property Research and Dev. Co.*, 289 N.W.2d at 158.

E. The licensing supervisor's statements to Pawn America's lawyer are irrelevant.

Pawn America highlights the City licensing supervisor's statements to its lawyer that the application was in order. Pawn America had its lawyer handle every step of the application process. Pawn America and its lawyers have a high level of sophistication in dealing with city zoning regulations (including at least one recent court case involving a

change in zoning regulations).² The need to obtain the final zoning compliance letter relating to the specifics of the site was also clearly spelled out. Pawn America, more so than most applicants, should know that it has no vested right to current zoning regulations which can and do change, and presumably structures its contractual obligations accordingly.

Pawn America does not and cannot assert any entitlement or vested right to a permit based upon the statements by the licensing supervisor. Pawn America in effect argues that the City Council should forfeit its right to exercise its legislative authority to adopt an Interim Ordinance under some subjective concept of good or bad faith because the license administrator, unbeknownst to the City Council, accurately characterized the administrative status of the license to Pawn America's attorney. There is no merit to this proposition.

Pawn America bought the Trestman Building, a generic commercial building, presumably at its fair market value. It decided to allow the purchase contingencies to expire in July even though it would not have its pawnbroker's license until closing on October 31. Pawn America had not spent any money modifying the building on October 26 when the Interim Ordinance went into effect. The building has numerous allowed

² See *Pawn America Minnesota, LLC v. City of Minneapolis*, No. C6-99-1702, 2000 WL 343233, at *2 (Minn. Ct. App. Apr. 4, 2000) (unpublished) where the City changed the zoning ordinance while Pawn America's application was pending. The court acknowledged that the city had a rational basis to have additional zoning restrictions relating to pawnshops. The court stated:

From the information available to it, the city could reasonably assume that the concentration of businesses such as pawnshops and currency exchanges presented the danger of urban blight. As such, the city had a rational basis to believe that separating such businesses by a reasonable distance would decrease that danger. Because the Text Amendment is reasonably designed to address a valid governmental concern, it passes the rational basis test and is valid.

uses, including secondhand goods, payday lending and other non-pawnshop uses that are part of the Pawn America's overall business enterprise.

- F. The current limitations on the number of pawnbroker business licenses does not invalidate an Interim Ordinance to protect a long-term planning study.

The fact that only two pawnbroker licenses are currently allowed in the City is irrelevant to the validity of the Interim Ordinance. Pawnshops move from one location to another, just as a small pawnshop located in the City did in 2006. Additionally, whether there is the current potential for two or ten businesses of a certain type in the City should not determine whether the Council can adopt an Interim Ordinance while it conducts a planning study.

A municipality's adoption of a comprehensive plan pursuant to Minn. Stat. Ch. 462, together with zoning regulations and other official controls to implement the land use component of the plan, is separate and apart from a city's business licensing function. It is certainly reasonable for the City Council to utilize the Interim Ordinance authority to protect a planning process looking at its overall, long-term approach to pawnshops and land use in the context of its zoning ordinance. The City Council may decide to increase the number of pawnshop licenses in the future. The restriction on the number of licenses could be subject to challenge. State law relating to licensing could change. In the meantime the City's overall land use regulations are in place.

Additionally, Pawn America presented a pawnshop business model of an overall size and scope that was new to the City. It proposed to combine a pawnshop with a payday lending operation, precious metals dealership and secondhand goods store. The

overall size of the operation was something the City had not seen before. This raised new issues concerning concentration of uses that the City had not dealt with before from a zoning standpoint. These issues were referenced by the Council in the Findings and Purpose section of the Interim Ordinance and addressed in the City's Planning Study.

G. The Interim Ordinance was enacted without discrimination.

In *Almquist* the court held that a municipality, prompted by one particular development application, had implied authority to enact a moratorium if, among other things, it was "enacted in good faith and without discrimination." *Id.*, 245 N.W.2d at 825. The court offers no guidance as to what conduct would be invalidating discrimination.

Minn. Stat. 462.355, Subd. 4(a) subsequently granted specific statutory authority to adopt an Interim Ordinance that "may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof." The statute allows a municipality to permissibly discriminate between both uses and different areas of the city. An Interim Ordinance can apply to one use city-wide, all uses in one area of the city, or one use in one area of the city.

Here, the City Council placed a temporary city-wide prohibition on a use as allowed by the statute while the City performed a planning study. Its impact on one pending application cannot be considered discrimination that invalidates the ordinance. In fact, as discussed above, acting quickly to prevent a use from being established in order to protect a planning process is exactly why the statute exists. It would make no

sense to say that a city must have more than one pending application before it can act to protect its planning process.

IV. The motives of individual City Council members are irrelevant to the validity of an ordinance.

St. Louis Park has a seven member council. Appellant highlights from the extensive city record one off-the-cuff statement by the Mayor and a couple of other innocuous comments by a councilmember, while at the same time completely ignoring the record of the October 1, 2007 Council meeting. (RA30-RA51.) Pawn America is apparently inviting this Court to engage in some sort of subjective, ad hoc fact finding relating to good faith based on isolated comments by individual councilmembers.

Not only are such comments totally irrelevant, the overall record demonstrates that the City Council followed the procedures prescribed by statute and its City Charter for adopting an ordinance of this type. Even though a public hearing was not required, at the October 1 City Council meeting, the Mayor allowed citizens and Pawn America representatives to fully air their views on the Interim Ordinance. (RA30-RA51.) The City then proceeded to conduct its planning study. The City Council acted in good faith and used the Interim Ordinance tool given it by the legislature for its intended purpose to protect its planning process. *Wedemeyer*, 540 N.W.2d at 543. It is what the City Council objectively did, and not a couple ad hoc comments of its members, that dictate the validity of an ordinance.

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.

In *Anderson v. City of St. Paul*, 226 Minn. 186, 32 N.W.2d 538, 548 (1948) this Court succinctly stated the general rule that “it is not permissible for the courts to inquire into the motives of the city council in enacting the ordinance for purposes of assailing its validity.” See also *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 292 (2000) (“As we have said before . . . this Court will not strike down an otherwise constitutional statute on the basis of an illicit motive.”); *State v. Target Stores, Inc.*, 279 Minn. 447, 156 N.W.2d 908, 917 (1968) (“the private and unformulated influences which may work upon legislation are not open to judicial probing”) (quoting *McGowan v. State of Md.*, 366 U.S. 420, 469 (1961) (J. FRANKFURTER concurring.)).

Likewise, it is impermissible to inquire into the motives of the individual council members. In *Higgins v. Lacroix*, 119 Minn. 145, 137 N.W. 417 (1912), the Minnesota Supreme Court held that admissions of individual village council members were erroneously received by the trial court on the validity of an ordinance that increased the licensing fee for theaters.

Legislative acts would rest on insecure ground, indeed, if admissions of the individual legislators that the attainment of a nonpermissible or unlawful end was the motive and purpose in enacting a law is to be received in evidence and be considered by the courts when called to pass on its validity. Discussions of lawmaking bodies when considering and enacting a law may, when the language is obscure and doubtful, be considered by the courts for the purpose of arriving at the true intent and meaning of the act, but manifestly it ought to be beyond the power of one who has been intrusted with authority to enact a law to impeach the same by any

subsequent statement of secret or avowed motives entertained at the time of its passage that would work its invalidity.

Id. at 417-18. In other words, when determining legislative intent behind an ambiguous ordinance, courts may look to the intentions of the individual council members. However, where validity of the ordinance is concerned, the individual's motive is irrelevant.

In *Rose Bros. Lumber*, as discussed above, the City of Minneapolis adopted a moratorium on lumber yards until the City Council could further consider the matter. The Court rejected the District Court's statement that the subsequent ordinance was passed to prevent Respondent from obtaining a permit. The Court stated:

We believe that it transcends the rule as to the permissible scope of inquiry into legislative acts. It is not property to delve into the motives of a legislative body such as a city council except as they may be disclosed on the face of the particular act in question or by reference to general existing conditions or other legislative acts. *Higgins v. Lacroix*, 119 Minn. 145, 137 N.W. 417, 41 L.R.A. (N.S.) 737. This ordinance on its face is general in its terms. Nothing can be found therein or elsewhere within the sphere of permissible inquiry indicating that it was passed merely for the purpose of preventing respondent from obtaining a permit. Consequently the statement was improper and cannot be considered here.

Id., 268 N.W. at 846.

V. The City did not arbitrarily delay the issuance of the pawnbroker's license. Pawn America attempted to unreasonably accelerate the process.

Appellant's claim that the City arbitrarily delayed the issuance of the pawnbroker's license is totally unsupported by the facts. It is also irrelevant to the issue of whether the Interim Ordinance was adopted to protect the planning process.

When Pawn America submitted its pawnbroker's license application in June of 2007, it also submitted its purchase agreement and represented to the City that it would

close and have ownership of the building on October 31, 2007. Long before any consideration of an Interim Ordinance, Pawn America was advised by City staff that a license would not be issued until Pawn America was actually in possession of the property. (A133.) The reason for this was because the license is issued for a particular location and the City needs to confirm that the site physically complies with the licensing and zoning requirements. (RA20-21.) This is especially relevant to a pawnshop because the licensing ordinance requires the installation of Automated Pawn System (APS) to track stolen goods and video surveillance cameras. (RA20-RA21.)

The zoning letter that Pawn America's attorney obtained at the time of its application confirmed that the property was in the C-2 zoning district, and that pawnshops are a permitted use in that district. However, in the zoning letter, the lawyer for Pawn America was also advised that the zoning administrator could not verify whether a pawnshop business at this location would meet the applicable zoning requirements relating to parking, density and setbacks and that a separate "Certificate of Occupancy and Registration of Land Use Application" form would need to be submitted. (RA19.)

When Pawn America was advised on September 26, 2007 that the City Council would be considering an Interim Ordinance, Pawn America then hurriedly presented a lease of the property to the City, claiming that it would somehow be operating its pawnshop in conjunction with the existing Trestman Music store, which remained fully operational at the site. (A230; RA20.) This triggered the need for the Registration of Land Use Application which was initially submitted on September 28 and completed on

October 2, 2007 with the submission of the floor plans. (RA16.)³ Additionally, the required criminal background check had not been completed when Appellant started demanding the immediate issuance of the license on September 28. (A105.)

The City licensing staff was proceeding under the assumption that the pawnshop license would be issued as part of an ownership transfer of the building on October 31, 2007. City staff did not delay the process. Rather, Pawn America, prompted by the Council's consideration of an Interim Ordinance, attempted to unreasonably accelerate the process by proposing an unusual, and arguable fabricated, co-occupancy arrangement with the existing music store, and then demanding the immediate issuance of the pawnbroker's license. Pawn America made the demand for its license even though the pawnshop operation was not set up, the zoning verification was not completed and the background check had not been done.

Clearly Pawn America was not entitled to a pawnbroker's license prior to the adoption of the Interim Ordinance. The District Court rejected Pawn America's argument on October 8, 2007 when it denied the Mandamus Application from the bench and revisited the issue again on October 22, 2007 when Pawn America's Application for a Temporary Restraining Order was likewise denied.

³ The Registration of Land Use process "relating to zoning" and as such would require the cit to act on the application within the sixty (60) day time limit in Minn. Stat. §15.99.

VI. The City complied with the procedural requirements of its charter when it adopted the Interim Ordinance in a timely manner to protect the planning process.

It is undisputed that the City complied with the procedures in its City Charter for adopting an ordinance. Minn. Stat. §462.355, Subd. 4 has no procedural requirements for adopting an Interim Ordinance. Unlike the more abbreviated process for statutory cities that do not have their own charter, St. Louis Park's charter requires two readings (at least seven days apart) of an ordinance which is then not effective until fifteen (15) days after publication. St. Louis Park City Charter §§ 3.05, 3.07, 3.08.

Appellants have two complaints. The first complaint is that the City Council adopted the ordinance the following Monday on October 8 at a special meeting prior to its regularly scheduled work session rather than waiting 14 days until its next regular meeting on October 15. The second complaint is that City staff, in anticipation of the Council's adoption of the Interim Ordinance on October 8, sent the notice of publication to the newspaper prior to the October 8 meeting so that its official publication would appear in the newspaper on Thursday, October 11, instead of the following Thursday, October 18. It is undisputed that the meeting and publication process complies with the charter. Additionally, there is nothing in the record indicating that there is anything out of the ordinary with this process when timing is important.

An Interim Ordinance is intended to protect the planning process. Once the City Council decided to initiate the planning study on October 1, it is certainly reasonable, if not imperative, that it would take the necessary steps, in compliance with its charter

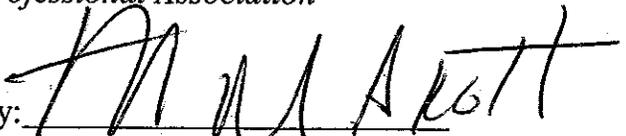
requirements, to protect that planning process by having the Interim Ordinance in place as soon as possible.

CONCLUSION

The Court of Appeals decision should be affirmed.

Respectfully submitted this 30th day of December, 2009.

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**STATE OF MINNESOTA
IN SUPREME COURT**

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

Appellant,

v.

City of St. Louis Park, Minnesota,

Respondent.

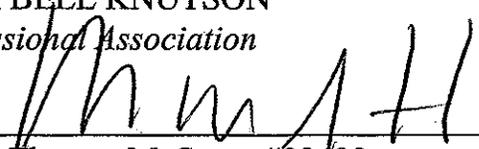
CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a 13 pt. Times New Roman font. The length of the brief is 11,115 words. This brief was prepared using Microsoft Word software.

Dated: December 30, 2009

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