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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1697**

Pawn America Minnesota, LLC,
Appellant,

vs.

City of St. Louis Park, Minnesota,
Respondent.

**Filed August 11, 2009
Affirmed
Bjorkman, Judge
Dissenting, Stauber, Judge**

Hennepin County District Court
File No. 27-CV-07-20208

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Considered and decided by Stauber, Presiding Judge; Toussaint, Chief Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

On appeal from summary judgment granted to respondent City of St. Louis Park (city) on the ground that its interim ordinance placing a moratorium on the issuance of

pawnbroker licenses was valid, appellant Pawn America Minnesota argues that (1) the interim ordinance was arbitrarily enacted and (2) the district court erred in not requiring the city to issue a pawnbroker license to appellant. Because the interim ordinance was valid, we affirm.

FACTS

On June 7, 2007, appellant Pawn America's holding company, PAL Holdings, LLC, entered into a purchase agreement to acquire property located at 5600 Excelsior Boulevard (the property). The purchase agreement provided that the property sale would close on October 31, 2007. Under the terms of the purchase agreement, appellant could cancel the agreement if it were unable to obtain final government approvals and licenses by July 16, 2007.

On the day it signed the purchase agreement, appellant applied to the city for a license to operate a pawnshop at the property. At the time of the application, pawnshops were a permitted use at that location. Under the city code, the city limited the number of pawnbroker licenses to two; one license was available at the time of appellant's application. The city's assistant zoning administrator immediately issued a zoning verification letter confirming that appellant's "intended use of the [property] as a pawn store, secondhand goods store, precious metals dealer and an industrial loan and thrift company complies with the zoning code and other applicable city ordinances," but noted that additional applications may be required.

Appellant contacted the city on July 13, 2007, to determine the status of its license application. The city's inspection supervisor responded via e-mail and voicemail:

“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.”

In September 2007, citizens who resided near the property heard rumors that a pawnshop would be opening at the property. These residents informed City Councilmember John Basill of their opposition to this proposed use of the property. Basill contacted several city staff members to determine the status of the licensing process and whether approvals could be postponed.

On September 24, 2007, the city council met in a regularly scheduled session. The city manager raised the issue of appellant’s pending application for a pawnbroker license. The city manager noted that in 2002 the council had amended the pawnshop ordinance to create a number of reporting requirements to help curb the sale of stolen goods and to promote communication between law enforcement and pawnshops and that these processes had been successful thus far. Both councilmember Basill and the mayor stated their opposition to appellant’s application. The city’s legal counsel noted that the property was properly zoned for a pawnshop and that one of the two authorized pawnbroker licenses was still available. But legal counsel also indicated that the council could adopt an interim ordinance or moratorium to permit the council to initiate a zoning study to see if the city should put any “additional conditions or restrictions on pawnshops.”

The next day, the city drafted a public announcement:

The St. Louis Park City Council will consider the adoption of an interim ordinance at their October 1, 2007 meeting requiring a planning study for zoning and land use controls related to pawn shops. No new pawn shop licenses will be issued during the study period. Study findings and recommendations will be presented to Council no later than 12 months from the adoption of the interim ordinance.

On September 26, appellant learned of the council's intent to adopt an interim ordinance.

On October 1, the city council passed a resolution adopting the first reading of the interim ordinance temporarily prohibiting pawnshops and directing city planning staff to conduct a study to determine how pawnshops should be regulated within the city.

The city's charter requires that a proposed ordinance receive two readings at least seven days apart and be published in the city newspaper. St. Louis Park, Minn., City Charter §§ 3.05 & 3.07 (2005). An ordinance becomes effective 15 days after it has been published. *Id.*, § 3.08 (2005). Here, although the ordinance had not received final approval, the city forwarded it to the local newspaper on October 3 to be published on October 11, after the second reading, with an effective date of October 26. The city then held another meeting on October 8, 2007, for the second reading of the proposed interim ordinance.¹

Meanwhile, on October 4, appellant filed a petition with the district court seeking a writ of mandamus requiring the city to issue a pawnbroker license. The court issued an alternative writ of mandamus ordering the city to either issue the license to appellant or to

¹ Appellant does not argue that the city violated its charter by sending the ordinance to the newspaper before the second reading occurred; the district court noted that, "[b]ut 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."

appear on October 8 and show cause why it had not been issued. The city did not issue the license and, after a hearing involving both parties on October 8, 2007, the district court denied the petition. On the same day, the council conducted the second reading and adopted the interim ordinance. As adopted, the interim ordinance prohibited the further consideration and approval of any license applications for new pawnshops, and included a resolution that applications for a business license, building permit, or any other permit for a new pawnshop would not be considered by the city during the interim ordinance period. On October 10, 2007, appellant filed an amended mandamus petition that included a complaint for declaratory and injunctive relief relating to the interim ordinance. Appellant also filed a motion for a temporary restraining order pursuant to Minn. R. Civ. P. 65.01. The district court denied the motion for a temporary restraining order on October 22, 2007. The interim ordinance went into effect four days later.

The city completed the zoning study on December 5, 2007. The zoning report proposed an ordinance amending the city zoning laws to make pawnshops a conditional, rather than permitted, use.

On January 7, 2008, appellant closed on the property, assigning the obligations of the agreement to an affiliated business.²

On February 22, 2008, the city formally amended its zoning code to limit the location and operation of pawnshops, making them a conditional use and adding 12

² Appellant contends that closing was delayed from October 2007 to January 2008, solely because of the city's moratorium. Appellant's affiliate presently occupies the property.

specific conditions for issuing a conditional-use permit. The district court noted that “[t]he effect of these changes is that a pawn shop cannot be located at the Property.”

Both parties filed motions seeking summary judgment as a matter of law. Appellant sought a declaration that the interim ordinance was invalid and an order directing the city to issue the pawnbroker license. The city sought dismissal of all of appellant’s claims on the grounds that the interim and 2008 permanent ordinances do not permit a pawnshop at the property. The district court granted the city’s motion on the basis that the interim ordinance was validly enacted. This appeal follows.

D E C I S I O N

“On appeal from summary judgment, a reviewing court must view the evidence in a light most favorable to the nonmoving party and determine whether any genuine issues of material fact exist and whether the district court erred in applying the law.” *Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539, 541 (Minn. App. 1995). The interpretation of zoning ordinances presents a question of law. *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). We review questions of law de novo. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984).

I.

A municipal ordinance is presumed to be valid. The party challenging an ordinance has the burden of demonstrating that it “is unreasonable or that the requisite public interest is not involved, and consequently that the ordinance does not come within the police power of the city.” *City of Crystal v. Fantasy House, Inc.*, 569 N.W.2d 225,

228 (Minn. App. 1997) (citing *City of St. Paul v. Dalsin*, 245 Minn. 325, 329, 71 N.W.2d 855, 858 (1955)), *review denied* (Minn. Nov. 18, 1997).

Interim ordinances are expressly authorized by Minnesota’s Municipal Planning Act. Minn. Stat. § 462.355, subd. 4 (2008). And even before enactment of this statute, the Minnesota Supreme Court recognized the inherent authority of a city to adopt a moratorium in response to a permit application. *Almquist v. Town of Marshan*, 308 Minn. 52, 63, 245 N.W.2d 819, 825 (1976). A moratorium falls within a city’s general police powers if it is limited in duration, appropriate studies are conducted, and zoning ordinances are expeditiously adopted. *Wedemeyer*, 540 N.W.2d at 542. “Municipalities have wide latitude in exercising their police powers in zoning decisions. Their decisions are generally undisturbed if the decision bears a substantial relation to a legitimate public interest.” *Id.* But a municipality may not arbitrarily enact an interim ordinance to limit a particular project. *City of Crystal*, 569 N.W.2d at 229.

Minn. Stat. § 462.355, subd. 4(a), states that

[i]f a municipality is conducting studies or has authorized a study to be conducted or has held or has scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or official controls . . . [such as city ordinances or regulations] . . . the governing body of the municipality may adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the jurisdiction or a portion thereof for a period not to exceed one year from the date it is effective.

Appellant emphasizes the language “*is conducting* studies or *has authorized* a study to be conducted,” arguing that because the city did not initiate its zoning study before appellant submitted its pawnbroker license application, the interim ordinance was invalidly enacted. But the statutory language is not so restrictive. Rather, the terms of the statute expressly permit a city to adopt an interim ordinance in support of valid public purpose so long as the city is studying the particular zoning issue or has directed such a study. Here, the city authorized the study process at the same time it adopted the interim ordinance.

Appellant argues that *Med. Servs., Inc. v. City of Savage*, 487 N.W.2d 263 (Minn. App. 1992), is dispositive and that the district court erred in failing to follow its holding. We disagree. In that case, Medical Services applied for a conditional-use permit seeking to construct an infectious-waste processing facility. 487 N.W.2d at 264–65. Counsel for the City of Savage opined that the proposed use did not fall within any provision of the zoning ordinance, and the city adopted a resolution that terminated Medical Services’ application. *Id.* at 265. Shortly thereafter, the city council rejected a proposed amendment to the zoning ordinance that would make an infectious-waste facility a conditional use. *Id.* Medical Services commenced a declaratory-judgment action and the city subsequently enacted a moratorium on the issuance of building and special-use permits in industrial zones. *Id.* In granting summary judgment for Medical Services, the district court concluded that the facility was a permitted use and that Medical Services’ application was unaffected by the moratorium. *Id.*

This court concluded that the proposed facility fell within the plain and ordinary meaning of the existing zoning ordinance, and that no express restriction existed. *Id.* at 266-67. We noted that the broad authority Minn. Stat. § 462.355, subd. 4, grants to municipalities is not unlimited: “A municipality must exercise the authority for the purpose of protecting the planning process. A municipality may not arbitrarily enact an interim moratorium ordinance to delay or prevent a single project.” *Id.* at 267. We observed that the city council enacted the moratorium more than two years after the council became aware of Medical Services’ development plans and that the city did not use that time to engage in a study process. On those facts, we concluded that the city acted arbitrarily and the moratorium was invalid. *Id.*

This case presents different circumstances. Unlike *Med. Servs.*, the city did not know of appellant’s plans far in advance. Even though appellant had interacted with various city employees, the city council was not aware of the proposed pawnshop until September. After learning of appellant’s application, the city immediately enacted an interim ordinance and commenced a study to determine whether additional regulations should be placed on pawnshops located in the city. Review of the council meeting minutes reveals that a number of city residents objected to appellant’s application. But the minutes also identify general concerns regarding the use and placement of pawnshops, including: limitations on the sale of guns and other items in pawnshops, the location of pawnshops in proximity to police stations, hours of business, and the impact on adjacent residential areas of pawnshops that offer check-cashing services and other adult-oriented businesses. The city council ultimately placed the moratorium not just on

the property, but on the entire city so that a study could be conducted. Unlike the City of Savage in *Med. Servs.*, the city promptly followed through with the study process and ultimately amended its permanent zoning ordinance based on the study's recommendations. And the interim ordinance was limited in duration; only in effect for four months.

The city has never denied that it enacted the interim ordinance in response to appellant's pawnbroker license application. But that does not, in and of itself, make the city's action arbitrary. The city had not reviewed its pawnshop ordinances in over five years. And appellant's proposed pawnshop operation was structurally different than the city's other pawnshop because it included check-cashing and other adult-oriented services. The city council determined that this concentration of different activities in appellant's proposed pawnshop operation warranted further study and analysis.

By its terms, the interim ordinance was enacted to permit a study to consider 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." Under the circumstances, it was appropriate at the time for the city to reexamine all of its pawnshop regulations. Because broader public policy concerns existed, the fact that appellant's application prompted the ordinance does not make it arbitrary or discriminatory. *See St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989) (stating that a municipality's zoning decision is not arbitrary or capricious when at least one of the rationales for the decision is reasonably related to the promotion of the public

health, safety, or general welfare of the community), *review denied* (Minn. Dec. 1, 1989); *see also Duncanson v. Danville Twp.*, 551 N.W.2d 248, 252 (Minn. App. 1996) (“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.”), *review denied* (Minn. Sept. 20, 1996).

Appellant points to the city inspector’s statement that as far as the city was “concerned, the paperwork is in order and the license will be issued as soon as the store is ready for business,” asserting that it proceeded with the purchase agreement based on this representation. And because city employees had advised that there were no application deficiencies, appellant contends that the city council’s later adoption of the interim ordinance was discriminatory. But the fact that a city employee says “[e]verything looks great . . . ,” does not prevent the city council from exercising its police powers to preserve the status quo and conduct a planning study. *See Wedemeyer*, 540 N.W.2d at 543 (rejecting argument that a council member’s claimed misunderstanding of pawnshop industry indicates bad faith). Appellant cites no authority for the proposition that statements made by a municipal employee concerning the permitting and licensing processes deprive a municipality of its broad zoning authority. And appellant’s proposition is contrary to established law. *See Alexander Co. v. City of Owatonna*, 222 Minn. 312, 319, 24 N.W.2d 244, 249 (1946) (holding that a municipal officer who did not have authority granted to him under a municipal charter or ordinance provision could not bind the city), *overruled in part on other grounds by Johnson v. City of Plymouth*, 263 N.W.2d 603 (Minn. 1978).

As the district court noted, the city adopted the interim ordinance immediately after it became aware of appellant's proposed pawnshop operation and imposed a moratorium on the issuance of pawnbroker licenses pending a study of the city's current zoning practices. And on the basis of that study, the city promptly adopted a new, permanent ordinance. Given that the interim ordinance was enacted for further study and planning purposes, that the city engaged in planning, and that the moratorium and study were initiated to address public safety and welfare, we conclude that the interim ordinance was valid.

II.

Because the interim ordinance was properly enacted on October 26, 2007, and placed a valid moratorium on issuing pawnbroker licenses, the district court did not err in concluding that the city is not required to issue a pawnbroker license to appellant.

Affirmed.

STAUBER, Judge, dissenting

I respectfully dissent. This case is squarely on all fours with *Med. Serv., Inc., v. City of Savage*, 487 N.W.2d 263, 267 (Minn. App. 1992), which specifically prohibits a municipality from arbitrarily enacting “an interim moratorium ordinance to . . . prevent a single project.” The record is replete with quotes from the city’s mayor and council members admitting that they would use any means, including an interim “study” ordinance, to stop the Pawn America project. City zoning officials were placed in an awkward position because staff had already given preliminary project approval and had been working collaboratively with Pawn America. Pawn America’s project met all of the city’s 2002 zoning requirements without a need for variances or special permits. The 2002 ordinance reduced the number of pawn shops from three to two and allowed them only in C-2 zones. Here, pawn shop licensing simply awaited the store’s opening according to the city inspections supervisor. The mayor and council instructed the city manager to stop the project only one month before the projected opening date. They instructed the city attorney to post-haste implement an interim “study” moratorium to stop this specific project. These political manipulations began long after Pawn America had justifiably and detrimentally relied on the city’s preliminary approvals by removing purchase agreement contingencies in order to acquire conforming property—the Trestman Music building.

The majority stretches to distinguish this matter from *Med. Servs.*, indicating that the city “did not know of appellant’s plans far in advance.” However, the city zoning and

licensing departments knew of Pawn America's proposal in June 2007. Meetings were held with the city, and the licensing application was submitted and preliminarily approved in early July 2007. It was not until late September 2007 that the mayor and council frantically began to derail the project. The mayor's quote was, "Here's my policy statement on it: Figure out a way to say 'no.'" The record indicates that the city "pre-published" the proposed interim ordinance in order to implement it effective October 26, 2007, just five days before Pawn America's scheduled closing on its building purchase, and the date it was scheduled to receive its pawnbroker license. It is this kind of governmental conduct which *Med Servs.* prohibits.

Unfortunately, the result of the city's "study" was to prohibit Pawn America from opening a pawn shop on its site due to two material changes in the zoning ordinance. First, any pawn shop must be 350 feet distant from residential zones and second, pawn shops are now allowed only by a conditional-use permit. While the separation of powers and general police powers arguments proffered by the majority are well taken, open and obvious discrimination against a complying "single project" is arbitrary.