

STATE OF MINNESOTA  
COUNTY OF GOODHUE

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
CIVIL DIVISION

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In the Matter of:

Court File No. CV-06-3265

City of Red Wing,

Plaintiff,

vs

Terry Amyx, Aaron A. Aslakson, Eric D. Bremer, Steven D. Bee, Dorothy A. Danielson, Michael Danielson, Tris Danielson, Michele R. McCaughtry, Robert M. McCaughtry, Rebecca McCaughtry, Timothy M. McKim, Tonia J. Nance, Ryan R. Peterson, Richard L. Rusch, Douglas W. Sjostrom, Kim J. Sjostrom, Bradley D. Sonnentag, Adriana Sonnentag, and David L. White, Jr.,

Defendants.

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**ORDER QUASHING THE  
ADMINISTRATIVE WARRANT AND  
DISMISSING THE MATTER  
AND JUDGMENT OF DISMISSAL**

The above matter came before the Honorable Thomas W. Bibus, Judge of District Court, on July 27, 2007, at the Goodhue County Justice Center in Red Wing, Minnesota, for a hearing on Plaintiff's motion for an administrative search warrant. Also before the Court was the Defendants' cross-motion to quash and dismiss the amended application for administrative warrant. Both parties considered the motions dispositive.

Pamela L. VanderWiel and John M. Baker, Attorneys at Law, appeared for the Plaintiff. Nicholas C. Dranias and Lee McGrath, Attorneys at Law, appeared for certain Defendants named on the record, including Michele R. McCaughtry, Robert M. McCaughtry, Rebecca McCaughtry, Timothy M. McKim, Douglas W. Sjostrom, Kim J. Sjostrom, Adriana Sonnentag, Bradley D. Sonnentag, and to the extent he was still a named party, Ryan R. Peterson. Also present in the courtroom was Bradley D. Sonnentag.

Based on the extensive arguments and submissions of counsel, and all the files, records, and proceedings, the Court makes the following:

**FILED**

AUG 31 2007

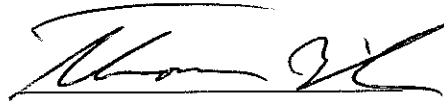
YVONNE J. BLACK  
COURT CLERK

**ORDER**

1. That Plaintiff's motion for the amended administrative search warrant to issue is hereby DENIED.
2. That Defendants' motion is GRANTED. The amended administrative search warrant filed is quashed (shall not issue) and the matter is hereby dismissed with prejudice. Judgment of dismissal shall be entered forthwith.
3. That the attached memorandum provides findings and rationale for the decision herein.

Dated: August 30, 2007

BY THE COURT:



Thomas W. Bibus  
Judge of District Court

JUDGMENT OF DISMISSAL

The foregoing Order Quashing The Administrative Warrant and Dismissing the Matter hereby constitutes the Judgment of the Court.

Dated: August 30, 2007

BY THE COURT:



Yvonne J. Black, Court Administrator

## Memorandum

Plaintiff requests that its Amended Administrative Search Warrant be issued and that it be allowed to proceed with essentially zone based inspections of all rental dwelling properties in the City of Red Wing. The City passed a Rental Dwelling Licensing Code that was adopted February 28, 2005, that Plaintiff argues authorizes such inspections.

The dispositive question in this matter is whether the city code authorizes the proposed inspection plan. See Cardinal Estates, Inc., v. The City of Morris, 2003 WL 1875487, at \*1 (Minn.Ct.App. 2003) (unpublished). The Court is not speaking to whether the City has the constitutional power or a reasonable basis to authorize such inspections. The Court's determination at this time is limited to whether the plain language of the ordinance authorizes the proposed inspections, which it does not.

### **Plain Unambiguous Language of the Rental Dwelling Licensing Code**

The parties disagree as to what authority is granted by the Red Wing City Code. Both parties point to the Housing Maintenance Code at § 4.30 and the Rental Dwelling Licensing Code at § 4.31 and § 4.32 to support their position.

Plaintiff argues that the inspections sought are authorized by the Red Wing City Code in three situations: (1) when a property owner submits a rental license application to the City, (2) on a scheduled basis, and (3) when reason to believe a code violation exists. Defendants argue that inspections are authorized in only two situations: (1) when a rental license application has been executed and (2) when reason to believe a code violation exists. The plain language of the ordinances, when read in their entirety, supports Defendants' reading.

Under the Red Wing City Code, a landlord may let a dwelling after obtaining a license or a temporary permit. See Red Wing Ord. § 4.31, subd. 1(1). Rental dwelling licenses and license renewals are conditioned on inspections. See Red Wing Ord. § 4.31, subd. 1(1), and subd. 1(10). The ordinance expressly states that no inspection is necessary for temporary permits. See Red Wing Ord. § 4.31, subd. 1(4).

In this case, it is undisputed that all remaining Defendants are temporary permit holders.<sup>1</sup> It is undisputed that the Defendants have not executed a license application. See Red Wing Ord. § 4.31, subd. 1(1). It is undisputed that Defendants have not been informed, nor does the code provide, that they must obtain a license at this time. See Red Wing Ord. § 4.31, subd. 1(4) (stating that temporary permits are valid until the owner is notified that a renewal application is required to obtain a license or the renewal application is rejected, and in no case for longer than three years). Furthermore, it is undisputed that no documented complaint has been received concerning Defendants' properties and that Plaintiff is not seeking inspections on the basis that it has particularized reason to believe a code violation exists. See Red Wing Ord. § 4.31, subd. (2)(1).

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<sup>1</sup> Plaintiff has asked that Defendants Eric D. Bremer, Tonia J. Nance, Ryan R. Peterson, and David L. White, Jr., be dismissed from the matter.

In seeking the administrative search warrant, Plaintiff is proceeding under the impression that subdivision 2 of section 4.31 of the ordinance calls for area or zone based inspections when it states that:

Administration and enforcement. The enforcement officer administers and enforces the provisions of the HMC [Housing Maintenance Code] and may cause inspections, follow-up inspections, and reinspections on rental Dwelling Units on all classes of property within the city on a scheduled basis, and on rental Dwelling Units or owner-occupied residential units on all classes of property when reason exists to believe that a violation of the code exists, has been, or is being, committed. A documented complaint or complaints from a tenant of a rental Dwelling Unit shall be an adequate basis for a reinspection of a rental Dwelling Unit.

Red Wing Ord. 4.31, subd. 2(1).

The plain language of section 4.31, subdivision 2(1) does not authorize area or zone based inspections. It merely states that inspections provided for under the code may be done on a scheduled basis; the enforcement may proceed under zones as proposed, but the only inspections that can take place in such zones are those authorized by the Housing Maintenance Code. The Housing Maintenance Code, read in conjunction with all provisions of the Rental Dwelling License Code, nowhere authorizes an inspection process for temporary permit holders.

### **Tenant Safety**

The Court's reading of the ordinance is not at odds with the purpose of the Housing Maintenance Code. The purpose of the Code is "to protect, preserve, and promote the public health, safety and the general welfare of the people of the City." See Red Wing Ord. § 4.30, subd. 2. Tenants who rent from unlicensed landlords are on notice that the property is not licensed and therefore not inspected. See Red Wing Ord. § 4.31, subd. 1(4) (stating that a temporary permit shall be posted the same as a license). If a tenant or other person can provide a particularized basis for the City to have reason to believe a code violation exists, the person may inform the City and trigger the inspection power contained in subdivision 2 of section 4.31. In any event, temporary permits are valid for at most three years, so it appears the City intended inspections to proceed on a voluntary basis or as a condition to licensure in the interim. Nowhere does the Red Wing City Code authorize area or zone based inspections of all rental dwelling properties.

### **The Court's decision**

Given that the City has not authorized the inspection as contained in the amended administrative warrant application, the Court must act pursuant to its inherent authority and pursuant to Minn. R. Civ. P. 12.02(e) to dismiss the matter for failure to state a claim upon which relief can be granted. As both parties submitted additional materials above and beyond the amended application for administrative search warrant, the matter was treated as one for summary judgment and all parties were given a full opportunity to present all materials pertinent to the Court's determination. Given all the undisputed facts and a reading of the plain language of the ordinance, Defendants are entitled to judgment as a matter of law.

## Constitutional challenges

It is not necessary or prudent for this Court to address any of Defendants' constitutional challenges to the rental inspection plan at this time. The constitutional issues were not reached as the plain language of the ordinance was dispositive.<sup>2</sup> Furthermore, the constitutional issues were removed by Plaintiff to federal court for determination in Jesse Stewart v. City of Red Wing, United States District Court for the District of Minnesota, Docket No. 06-CV-4872 JRT/FLN. It is not this Court's intention to prejudice the pending federal case by this Court's decision.

T.W.B.

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<sup>2</sup> Contrast Camera v. Municipal Court, 387 U.S. 523, 535-536 (1967) (discussing constitutional issues when routine area inspections were authorized by the code); Search Warrant of Columbia Heights v. Rozman, 586 N.W.2d 273, 274 (Minn.Ct.App. 1998) (discussing constitutional issues when the code required annual inspections of all apartment rental units).