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LEGAL AID SOCIETY OF MILWAUKEE, INC.

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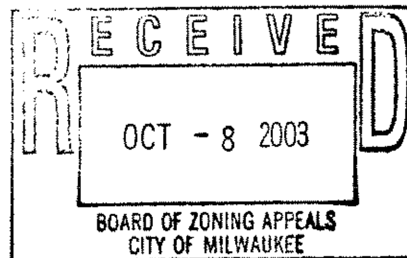
October 3, 2003

Mr. Craig Zetley
Chairperson
Board of Zoning Appeals for the City of Milwaukee
809 North Broadway, 1st Floor
Milwaukee, WI 53202



Alderman Joe Davis, Sr.
City of Milwaukee Common Council
200 East Wells Street
Milwaukee, WI 53202

RE: Item No. 25066, Special Use Application of First Payday Loans of Wisconsin for Payday Loan Operation at 5570 North 76th Street

Dear Chairman Zetley and Alderman Davis:

This letter is submitted in opposition to the pending special use permit from First Payday Loans of Wisconsin, an Illinois company, to operate a payday loan store at 5570 North 76th Street, Milwaukee. Legal Aid opposes the pending application because of the adverse effects expanded payday lending operations will have in the City of Milwaukee--effects that would be inconsistent with the public welfare. The City Attorney's Office has ruled that BOZA, according to available case law, is accorded "significant discretion...in applying the 'public welfare' component of the special-use permit criteria contained in § 295-311-2-d-1 of the [Zoning] Code." (May 7, 2003 letter from the Office of the City Attorney to BOZA.)

Legal Aid, accordingly, submits three concrete bases for the Board of Zoning Appeals to deny the pending application based on appropriate "public interest" discretionary factors.[1]

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[1] Materials referenced in this letter will be offered at scheduled hearings as attachments. The expert report of Professor Christopher Lewis Peterson is, however, enclosed.

1. **Adverse Impact Resulting From the "Clustering" of Payday Lending Operations: The Oversaturation of 76th Street**

The proposed location at 5570 North 76th Street will likely overload northwest neighborhoods of the City of Milwaukee with clusters of high-cost, long-term debt pushers. As of February 2003, Legal Aid determined that, of the 69 payday lending locations in Milwaukee County, 61% were located within city limits. Other "fringe banking" businesses follow the same pattern: 86% of the check cashers or currency exchanges in the Milwaukee County are located within the city; and 100% of the pawnbrokers in Milwaukee County are located within the city. These operations have not just "clustered" within the City of Milwaukee, as opposed to outlying areas, the easily observable fact is that these businesses tend to cluster in certain areas or neighborhoods of the city. As of February 2003, 61% of the payday loan store locations in the City of Milwaukee were located on just three thoroughfares.

The one City of Milwaukee street that contains more payday lending outlet than any other is 76th Street, which already has eleven outlets on that street, and another five within ten blocks. Along 76th Street, there was one cluster at 3906, 4750, 4760 and 4847 North 76th Street, plus 7600 W. Capitol Drive. Another cluster was found at 5910, 6404, 6520, 6863 and 6864 North 76th Street. A final cluster was found at 7941 and 8066 North 76th Street.

The obvious fact is that First Payday loans now intends to add to this payday loan imbalance on North 76th Street, by adding a location at 5570 North 76th Street.

The oversaturation or clustering of other payday loan and fringe banking operations in city neighborhoods predictably has negative consequences for other businesses in the area. This clustering effect tends to suggest to visitors, and other prospective business developers, that these particular neighborhoods are troubled by high numbers of credit-risk residents. Of course, the clustering effect ends up denigrating the quality of these neighborhoods, when the truth is that they have viable economies with large numbers of hardworking, income-producing, asset-building families. The clustering effect of fringe banking businesses (including payday lenders), in short, sends the wrong message--certainly, a message that is contrary to the economic development interests of the city and the public welfare. These adverse impacts are detailed by Christopher Lewis Peterson, University of Florida, Levin College of Law, in his expert report to BOZA.

Given the tendency of these businesses to oversaturate these areas and to cluster on particular thoroughfares, many municipalities are now turning to licensing maximums and per capita formulas. St. Joseph, Missouri, for example, has proposed to limit payday lending operations to one outlet for every 15,000 residents. If that formula were used in the City of Milwaukee, the city would welcome no more than 40 payday loan outlets. However, as of February 2003, the

city had already exceeded that number, and now First Payday Loans and others plan to make the numbers even higher.

2. Adverse Impact of Payday Lending on Nonprofit Services: The Increased Burden on Consumer Counseling Nonprofits

It is fairly predictable that expanded payday loan operations in the City of Milwaukee will lead to an increasing burden on the resources of nonprofits, such as Consumer Credit Counseling Services (CCCS). These charitable entities, usually funded by local United Way campaigns with every limited dollars, have reported serious increases in client numbers and problems directly attributable to payday lending excesses. For example, the following newspaper accounts are relevant:

> February 3, 2003, Milwaukee Journal Sentinel: Kathryn Crumpton, manager of the non-profit Consumer Credit Counseling Service in Milwaukee, said one problem with payday loans is that some people take out new ones without first paying back a previous loan with a different lender. "I've seen people who have payday loans that are equal to or exceed what their take-home income is for the month." she said.
>
> May 4, 2003, South Bend Tribune: Kathy Perron, director of Consumer Credit Counseling of Northern Indiana, urged consumers to avoid "payday loan" operations. While they can be a source of quick cash, the fees charged can often multiply greatly for those who can't pay the loans back on time, she said. "Payday loan outfits are terrible," she said. "If you can't afford a loan, you shouldn't take one out."
>
> February 16, 2003, Fort Collins Coloradoan: Sara Allen, executive director of Consumer Credit Counseling Service of Northern Colorado and Wyoming stated that when payday rolls around, and borrowers can't afford the interest rate on a payday loan, they often renew the loan, causing the charge to double. "People get into this cycle and they can't get out of it," said Allen. "It's difficult to untangle."
>
> July 9, 2000, The Record: "It's been a real problem," said Sue Becerra, Executive Director of the Consumer Credit Counseling Service of Mid-Counties, a Stockton-based non-profit that helps people overcome debt. 'The number of clients we've seen who've gotten in trouble over payday loans has increased 500% over the last year.'"
>
> January 31, 2000, Akron Beacon Journal: Bob Frazer of Dayton Consumer Credit Counseling Services said "His surveys show that the average CCCS client has 4

> open, or unpaid, payday loans and that some have up to 30. Said Frazer, 'It's a trap.'"
>
> September 19, 1999, Dayton Daily News: "Officials from the Consumer Credit Counseling Services of Miami Valley as well as the Legal Aid Society of Dayton, said that they are serving more clients who try to bale themselves out of financial waterfalls with payday loans only to see them eventually file for bankruptcy."
>
> February 21, 1999, Indianapolis Star: Melinda Wright of Consumer Credit Counseling Service "noted a sharp increase in clients with payday loans in the past 6 months."

Payday lending has had a similar effect on the nonprofit services offered by the Legal Aid Society of Milwaukee. The City of Milwaukee should be concerned about the negative impact that may result from expanded payday lending operations insofar as they draw down the limited nonprofit resources available to assist financially-stressed families.

Likewise, the City of Milwaukee should be concerned about the drain that will result on the court systems, state and local consumer protection agencies, as well as the effects that will follow for other local businesses, such as landlords, telephone companies, utilities, and medical providers. Typically, payday lenders, with their far more aggressive collection efforts, nose out these vital service industries when "short-term" payday loans overwhelm their customers with spiraling long-term debt. These adverse impacts are also detailed by Assistant Professor Christopher Lewis Peterson of the University of Florida, Levin College of Law, in his expert report for BOZA.

3. First Payday Loans' Misleading Operation Plan: The Long-Term Debt Coverup

First Payday's "plan of operation" which was filed with BOZA on June 20, 2003, deliberately misstates, in our view, the nature of the operation and its goals. First Payday (at page 1) states:

> "Our goal is to ensure that individuals have an opportunity to receive *short-term*, small personal loans, typically under $500, when an emergency arises. The loans that we offer are not offered by other lending institutions because of the administrative costs and burden. Our lending office is specialized to assist people who typically have a difficult time obtaining emergency funds."

(Emphasis added.)

There are at least three fundamental flaws in this "plan of operation" description. First, it has been firmly established through scholarly research that payday lenders cannot operate as

profitable businesses if their customers were to receive just single installment loans for one, short, single loan term. By representing their product to be "short-term" loans, First Payday misrepresents the true "long-term" debt consequences of its business. Indeed, the payday lending business model requires that customers become chronic borrowers, burdened with *long-term* debt through the process of repeated "rollovers" or renewals of their short-term loans. Payday lenders, such as First Payday, make money by getting desperate consumers to take out multiple short-term loans so that they can be rolled over into long-term debt. This point is well-documented in the article by Dr. Michael A. Stegman, MacRae Professor of Public Policy and Business as the University of North Carolina at Chapel Hill, in his *Economic Development Quarterly* article, February, 2003 entitled, *Payday Lending: A Business Model that Encourages Chronic Borrowing.*

In another study, Professor John P. Caskey, Professor of Economics at Swarthmore College, reviewed raw data gathered by the Wisconsin Department of Financial Institutions specific to payday loan customers in the State of Wisconsin. His conclusions directly contradict the claims of First Payday. Caskey concludes in his April 2002 report, *The Economics of Payday Lending*, at page 25:

> "[T]he data are consistent with the charge that more payday loan customers are frequent borrowers who may well be trapped in a persistent and costly debt cycle. Over 40% of the longer-term payday loan customers in Wisconsin, for example, had 20 or more loan transactions over the course of a year. Assuming that they borrowed the average amount for Wisconsin customers ($245) and that they paid an average finance charge ($49) with each transaction, they would have each spent at least $980 in finance charges in order to keep a $245 loan outstanding for most of a year."

Second, First Payday represents that it is offering loan products that "are not offered by other lending institutions...." However, as explained in greater detail above, the City of Milwaukee has been inundated with payday lending and auto title lending outlets. There simply is no shortage of alternative financial service institutions, especially in the geographic area proposed to be served by First Payday on North 76th Street.

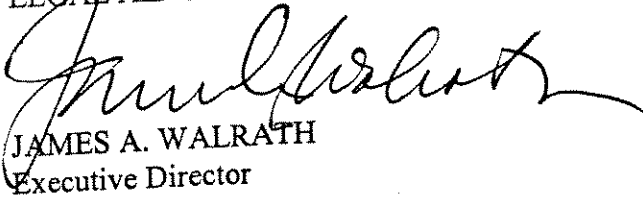
Third, payday lenders, such as First Payday, do not provide debt counseling services or any other service that is "specialized to assist people" in the best ways to deal with their needs for emergency funds. In fact, the payday lending business model requires that lenders offer their products for the undisclosed, yet paramount purpose of dragging customers into chronic, long-term, high-cost debt. This paramount purpose completely negates any business purpose to provide "specialized" assistance in the form of debt counseling or debt management services.

CONCLUSION

For the foregoing reasons, the Legal Aid Society of Milwaukee submits that the proposed expansion of payday loan outlets to include the First Payday location at 5570 North 76th Street is contrary to the public interest.

Very truly yours,

LEGAL AID SOCIETY OF MILWAUKEE, INC.



JAMES A. WALRATH
Executive Director

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Enc.

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BOARD OF ZONING APPEALS – MILWAUKEE, WI

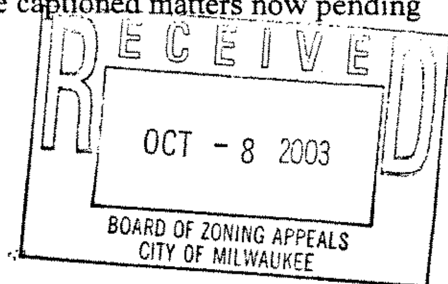
BOZA Case Numbers:
25060, 25062, 25063, 25064, 25065, and **25066**

Consequences of Payday Lender Special Use Permit Applications and Variance Requests on Public Welfare in Milwaukee, WI

Board of Zoning Appeals
Craig Zetley, Chairman
809 N. Broadway, 1st Floor
Milwaukee, WI 53202

Expert Report of Christopher Lewis Peterson, Assistant Professor of Law
University of Florida, Levin College of Law

I provide this statement as an expert witness in the above captioned matters now pending before the Board of Zoning Appeals ("the Board").



I. Introduction

This statement addresses the community-wide secondary impact to public welfare of an excessive number and/or concentration of payday lending outlets. Initially, a brief background discussion of the historical roots and business practices of the payday lending industry is offered. Second, the report addresses the authority of the board to deny special land use permits where issuing a permit would harm community welfare. Next, this report discusses whether an excessive number or concentration of payday lending outlets harms public welfare. And finally, concluding remarks, sources relied upon, and the authors qualifications are given.

II. Background Discussion

A. General Historical Background and Development of the Payday Lending Industry

The payday lending business has an ancient lineage. Subject to extensive peer review, historians and archeologists have found that high cost short term credit extended in contracts similar to today's payday loans have existed for at least five thousand years. Written contracts with similar provisions and prices have survived from ancient Mesopotamia, Athens, Rome, and other civilizations. Regulation of high cost short term credit contracts is also ancient. For instance, today's payday loans would have been prohibited under the Babylonian Code of Hammurabi (c. 1750 B.C.) which capped interest rates at about 20 percent per annum for loans made in bulk silver and 33 percent on loans of grain. Payday loans would also have been illegal in the Roman Republic and Empire which capped interest rates at 12 percent per annum.[1]

Historians agree variations of payday lending have existed throughout United States history as well. The term "loanshark" originated toward the end of the nineteenth century to

[1]Sidney Homer and Richard Sylla, *A History of Interest Rates*, 3rd ed. (New Brunswick, N.J.: Rutgers University Press, 1996), 30, 52; Paul Einzig, *Primitive Money In Its Ethnological, Historical and Economic Aspects* (Oxford, New York: Pergamon Press, 1966): 363; James M. Ackerman, "Interest Rates and the Law: A History of Usury," 1981 *Arizona State Law Journal* (1981): 61; James G. Frierson, "Changing Concepts on Usury: Ancient Times Through the Time of John Calvin," American Business Law Journal 7 (1969): 115; William Chester Jordan, *Women and Credit in Pre-Industrial and Developing Societies* (Philadelphia: University of Pennsylvania Press, 1993), 13; J. B. C. Murray, *The History of Usury from the Earliest Period to the Present Time* (Philadelphia: J.B. Lippincott, 1866); Benjamin Nelson, *The Idea of Usury: From Tribal Brotherhood to Universal Otherhood*, 2d ed. (Princeton, New Jersey: Princeton University Press, 1949); C. H. W. Johns, *The Oldest Code of Laws in the World: The Code of Laws Promulgated By Hammurabi, King of Babylon* (New York: Charles Scribner, 1903): 59; Samuel Noah Kramer, *The Sumerians: Their History, Culture, and Character* (Chicago: University of Chicago Press, 1963): 79-82. The ancient Athenian version of the payday loan were typically due at "the end of the moon." Homer and Sylla, *History of Interest Rates*, 35.

describe "salary lenders" who sold credit secured by borrowers' future wages. Contrary to today's Hollywood imagery which did not develop until the 1930s and '40s, the first loansharks rarely used violence to extort payment. Instead salary lenders catered to workers with stable jobs and respectable home lives. Lenders evaded state usury laws by structuring loans as an "assignment of future wages" and by avoiding litigation. A century ago, salary lenders would typically lend five dollars on a Monday to be repaid six the next Friday. Loans were also available for two week and month durations. Often called "five for six boys," these salary lenders are the direct predecessors of today's payday lenders. Except for the more recent innovation of personal checks, late nineteenth century salary loan transactions were essentially identical to today's payday loans in terms of price and expected duration.[2] Nevertheless, for the vast majority of American history, payday lending and similar high cost credit arrangements have been illegal.

In the late 1970s through the mid-1980s, many states eliminated or relaxed their regulation of consumer credit.[3] This was in response to factors such as the high market

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[2]Lendol Calder, *Financing the American Dream: A Cultural History of Consumer Credit* (Princeton, N.J.: Princeton University Press, 1999): 133-34; Kathleen E. Keest, "Stone Soup: Exploring the Boundaries Between Subprime Lending and Predatory Lending," *Practicing Law Institute Corporate Law and Practice Course Handbook Series* (April 16, 2001): 1111; Mark Haller and John V. Alviti, "Loansharking in American Cities: Historical Analysis of a Marginal Enterprise," *American Journal of Legal History* 21 (1977): 125, 127-28; John M. Glenn, et al., *Russell Sage Foundation 1907-1946*, vol. 1 (New York: Russell Sage Foundation, 1947): 47, 52-54; Homer & Sylla, *A History of Interest Rates*, 428; Kelso, "Social and Economic Background of the Small Loan Problem," *Law and Contemporary Problems* 8 (1941):15-20. *See also* Baxter Ware, "The Lure of the Loan Shark," *Harper's Weekly* 52 (11 July 1908): 32; "Jail and Exemplary Damages for Loan Sharks," *The Survey* 21 (31 January 1914): 512.

[3]PAUL R. BEARS, CONSUMER LENDING 12 (2d. 1992); Christopher C. DeMuth, *The Case Against Credit Card Interest Rate Regulation*, 3 YALE J. ON REG. 201, 201 (1986); KATHLEEN E.

equilibrium interest rates of the period, which raised depository lender's costs of funds to the point that profitable lending was difficult within interest rate caps,[4] and the Supreme Court's decision allowing banks to export their home state's usury law to consumers in other states.[5] Since then the relatively low priced consumer credit supplied to the middle class has continued to grow, financing consumer spending. However, in the wake of deregulation, markets for much higher priced loans extended to the working poor, the poverty stricken, and the desperate have seen enormous growth.[6] Payday lenders have been at the forefront of this trend in Wisconsin and around the nation.

B. Payday Lending Business Practices

KEEST, NATIONAL CONSUMER LAW CENTER, THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES 54-5 (1995).

[4]Bears, Consumer Lending, 12.

[5]Marquette National Bank v. First Omaha Service Corporation, 439 U.S. 299 (1978);

DeMuth, Case Against Credit Card Interest Rate Regulation, 215-16.

[6]JOHN P. CASKEY, FRINGE BANKING: CHECK CASHING OUTLETS, PAWNSHOPS, AND THE POOR 139 (1994) ("Over the 1980s, the number of pawnshops and check-cashing outlets nationwide more than doubled."); JOHN P. CASKEY, LOWER INCOME AMERICANS, HIGHER COST FINANCIAL SERVICES 8 (1997) ("It is also argued that reaching out to these households is a good business proposition, since the number of households using the alternative financial sector is large and growing."); KEEST *supra* note 4, at 59 ("[Credit costs] may not be a problem for most consumers who typically use credit cards or retail charge accounts for small-sum short term credit. But for other consumers, a variety of alternate sources with effective rates that would make a loanshark jealous have sprung up."). Michael Hudson, *The Poverty Industry*, in MERCHANTS OF MISERY: HOW CORPORATE AMERICA PROFITS FROM POVERTY (Michael Hudson, ed. 1996) ("Big companies are fueling the expansion and "incorporation" of the poverty industry by pouring growth capital and providing the sheen of brand-name respectability to transactions that Main Street and Wall Street once viewed with distaste.").

In a typical payday loan transaction, a customer might borrow $100.00 by writing a personal check made out to the creditor for $117.50. The date written on the check reflects a day two weeks in the future when full payment of the loan is due. The lender will verify the debtor's identity by asking for documents or identification such as a driver's licence, recent pay stubs, bank statements, car registration, or telephone bills. Many payday lenders telephone the borrower's human resource manager or boss to verify employment. Many lenders also telephone the borrower's bank or credit union to verify the account remains open. Virtually all lenders require the names, addresses, and telephone numbers of close family and friends in the event the borrower skips town. Most lenders call at least some of the character references in deciding whether to issue the loan. Payday lenders make credit decisions on the spot without obtaining a credit report, usually within fifteen minutes to a half-hour. After the paperwork is complete, the debtor walks away with $100.00 in cash or a check drawn on the lender's account. When the two weeks are up, the debtor can redeem the check with cash or a money order, permit the check to be deposited, or attempt to "rollover" the loan by paying another fee. If the borrower cannot pay off the loan, the obligation continues to accrue $17.50 in interest every two weeks. Although the initial $17.50 fee represents only 17.5 percent of the loan amount, the annual percentage rate of the transaction is around 456 percent.[7]

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[7]Jean Ann Fox, "What Does it Take To Be a Loanshark in 1998? A Report on the Payday Loan Industry," B4-7226 *Practicing L. Inst. Corp. L. & Prac. Course Handbook Series* 987, 989-90 (April-May 1998); Elizabeth Ryan, "Plus Ça Change: Part II (Or, Check Cashers as Lenders: The More Things Change, the Worse they Get)," *NCLC Reports --Consumer Credit and Usury Edition* 11 (1993): 25; Deborah A. Schmedemann, "Time and Money: One State's Regulation of Check-Based Loans," *Wm. Mitchell L. Rev.* 27 (2000): 973, 974-76; Scott Andrew Schaaf, "From Checks to Cash: Regulation of the Payday Lending Industry," *N.C. Banking Inst.* 5 (April, 2001):

Surprising to some, a 456 percent APR loan is not unusual. Because the federal government does not collect data on payday lender interest rates, there are no firm nationwide statistics showing payday loan prices. However, studies by state agencies, consumer advocates, and academics regularly suggest *average* payday loan annual percentage rates are roughly between 391 and 550 percent.[8] By way of comparison, average reported interest rates for extortionate mafia loanshark syndicates in New York City during the 1960s were a relatively inexpensive 250 percent.[9]

Although most payday loans have ostensible durations of about two weeks, empirical data from around the country confirm payday loans commonly accrue interest over much longer periods. For example, North Carolina state regulators counted the total number of payday loan transactions of given customers at a given company in a year. About 87 percent of borrowers would roll over their loan at least one time with any given lender. Not counting debtors who borrowed from multiple locations, 38.3 percent of customers renewed their payday loans *more*

339, 341-42.

[8]Indiana Department of Financial Institutions, "Summary of Payday Lender Examination: 7/199 Thru 9/30/99," (available at http://www.dfi.state.in.us) (viewed 11 January 2002) (finding average Indiana payday loan APR of 498.75 percent); Office of the Commissioner of Banks, State of North Carolina, "Report to the General Assembly on Payday Lending" (22 February 2001): 5-6 (finding approximately 63 percent of North Carolina payday loans have annual percentage rates between 805.15 percent and 460.08 percent); Public Interest Research Groups & Consumer Federation of America, *Show Me the Money: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* 7 (February 2000) (consumer advocate coalition study surveying lenders in 19 states and the District of Columbia finding average payday loan APR of 474 percent).

[9]Comment, "Syndicate Loan-Sharking Activities and New York's Usury Statute," *Columbia Law Review* 66 (1966): 167, 197 (reporting criminal loanshark interest rates averaging 250 percent annually).

than ten times. About 14 percent of borrowers would renew their payday loans with the same lender more than 19 times per year.[10] Indiana regulators found approximately 77 percent of payday loans are roll-overs of existing loans. While the average customer borrows 10.19 payday loans per year, some debtors borrow many more times.[11] Indiana regulators describe one debtor who renewed 66 times in order to pay off a single payday loan – approximately a two-and-one-half year debt – assuming a typical two week renewal cycle.[12] Another North Carolina study has recently concluded payday lender profits come disproportionately from these high-frequency borrowers.[13] Comparably, although Illinois state law limits payday loans to only three rollovers, state regulators found payday loan customers "who were borrowing continuously for over a year on their original loan."[14] The Illinois Department of Financial Institutions concluded their "three rollover rule has been ineffective in stopping people from converting a short term loan into a long term headache."[15] Although payday loans are marketed as a short term solution to

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[10]Office of the Commissioner of Banks, State of North Carolina, *Report to the General Assembly on Payday Lending* 5-6 (February 22, 2001).

[11]Public Interest Research Group and Consumer Federation of America, *Show Me the Money: A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* 8 (February 2000).

[12]Indiana Department of Financial Institutions, *Summary of Payday Lender Examination: 7/199 Thru 9/30/99*, available at www.dfi.state.in.us.

[13]Peter Skillern, *Small Loans, Big Bucks: An Analysis of the Payday Lending Industry in North Carolina* 4-5 (Community Reinvestment Association of North Carolina 2002).

[14]Sarah D. Vega, Illinois Department of Financial Institutions, *Short Term Lending Final Report* 30 (1999).

[15]*Id.* at 34.

temporary cash flow problems, the best available empirical evidence confirms borrowing money at triple digit interest rates tends to destabilize and impoverish payday loan customers.

Moreover, payday loans tend to erode the stability of families. The person most likely to immediately suffer external consequences of a high cost credit transaction is the debtor's spouse. The leading study of American bankruptcy found bankrupts, both men and women, often argue "they were dragged into bankruptcy by the financial irresponsibility of spouses and cohabitees."[16] Moreover, empirical research has consistently found financial hardship, such as that posed by overdue payday loan contracts, threatens marital quality and often leads to divorce. Most agree the ever increasing divorce rates of recent decades show changing gender roles and social expectations have left the institution of marriage fragile. The added stress of unmanageable debt burden can be more than enough to crush the already frail bonds that tie together many contemporary families. One survey found that 38 percent of respondents reported debt troubles had adversely affected their marriage. Sixty percent reported debt trouble had an adverse effect on the rest of their family.[17] Perhaps more surprising, financial hardship associated with high cost debt may prevent families from forming by deterring marriage in the first place. External consequences can unfurl out into the extended families of debtors as well. One study found that just under 25 percent of a sample of debtors in default on mortgage payments received help in making payments from their extended family. It is no doubt even more common for debtors to tap their familial resources in more informal ways, such as providing day care, food, clothing,

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[16]Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westerbrook, *The Fragile Middle Class: Americans in Debt* (New Haven: Yale University Press, 2000), 173.

[17]Martin Ryan, *The Last Resort, A Study of Consumer Bankrupts* (1995), 117-19.

and transportation when the debtor can no longer make these purchases. Even when such care is not extended, a debtor's family is likely to endure emotional pains of sympathy and regret when they learn of the debtor's financial troubles. Collectively, when one family member services triple digit interest rate debt, the rest of the family is likely to suffer.[18]

III. The Board has Broad Discretion to Deny Special Use Permits to Payday Lenders Where those Permits Would Harm the Public Welfare

Irrespective of widespread objections to payday lending business practices, payday lending is legal within the state of Wisconsin. Therefore, it is beyond the power of the board to prohibit payday lending. Furthermore, the Board has no authority to regulate the particular business practices of the payday lending industry.

Nevertheless, municipal governments within Wisconsin are entitled to adopt comprehensive zoning codes in order to promote the public health, safety, and welfare of citizens through the regulation of land within their respective jurisdictions. Under this authority, the Board has a *far reaching discretion* to take action necessary to protect public health, safety, and welfare. For instance, the Supreme Court of Wisconsin has held a planning board has discretion

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[18]R. D. Conger and G. H. Elder, *Families in Troubled Times: Adapting to Change in Rural America* (New York: Aldine de Gruyter, 1994); R.D. Conger, et al., "Linking Economic Hardship to Marital Quality and Instability," *Journal of Marriage and the Family* 52 (1990): 643-656; David Caplovitz, *Making Ends Meet: How Families Cope with Inflation and Recession* (Beverly Hills: Sage Publications, 1979), 121-22; Ford, *Indebted Society*, 108-12, 140; Sullivan, Warren & Westerbrook, *Fragile Middle Class*, 194-96; Lynn White and Stacy Rogers, "Economic Circumstances and Family Outcomes: A Review of the 1990s," *Journal of Marriage & the Family* 62 (4) (2000): 1035-1051; G. L. Fox and D. Chancey, "Sources of Economic Distress: Individual and Family Outcomes," *Journal of Family Issues* 19 (1998): 725-49.

to deny a land use permit to a mining corporation seeking to extract minerals from land zoned for agriculture. In that case the board was free to consider potential harm to individuals living near to the mine.[19] Similarly, the Board is free to consider intangible impacts to public welfare. In the case of a land use permit dispute over a public history museum, municipal planners were free to conclude the museum's ability to "educate the public and inspire patriotism and respect" in weighing the public welfare.[20]

Courts around the country have long held that the authority to protect public welfare gives municipal planers the discretion to deny land use permits to lenders. For instance, for over thirty years California courts have held municipalities may deny land use permits to pawnshops – lenders closely related to payday lenders – upon "considering the effect of the proposed [pawnshop] on surrounding property and its inhabitants."[21] This authority "imports a broad power to evaluate all proposed locations."[22] Moreover, municipal authorities even have the power to place an explicit upper limit on the number of pawnshop lenders within their community.[23]

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[19]Edward Kraemer & Sons, Inc. v. Saul County Board of Adjustments, 515 N.W.2d 256, 260 (1994).

[20]Sills v. Walworth County Land Management Committee, 648 N.W.2d 878, 884 (2002).

[21]Iscoff v. San Francisco, 222 Cal.App.2d 395, 408 (Cal.App.1.Dist.,1963).

[22]*Id.*

[23]Flax v. Richmond, 52 S.E.2d 250, 279 (Va. 1949) (upholding a municipal determination that "[n]ot more than twelve (12) places in the city of Richmond shall be licensed where the business of a pawnbroker ... may be conducted....")

For these reasons, the author believes it is well settled that the board has authority to deny special use permits to payday lenders in the interests of public welfare.

IV. An Excessive Number and/or Concentration of Payday Lenders will Harm General Public Welfare of Milwaukee

While consideration of the individual business practices of payday lenders may be beyond the jurisdiction of the board, there are nevertheless several compelling consequences to public welfare associated with an excessive number and/or concentration of payday lending outlets. These consequences include: (1) the administrative burden and expense upon Milwaukee area courts and taxpayers from increased personal bankruptcy filings and delinquent loan collection cases; (2) the burden and expense imposed on state and municipal law enforcement officials in policing payday lenders; (3) the displacement of other local businesses, professionals, and charities; and, (4) the disruption to municipal aesthetics.

A. Excessive and/or Concentrated Payday Lending Outlets will Harm Public Welfare by Overburdening Area Courts and Taxpayers with Bankruptcy Filings, Delinquent Loan Collection Cases, Garnishment Petitions, Attachment Proceedings, and Police Supervised Auctions

Bankruptcy and collection proceedings have proven to be an inevitable result of payday lending transactions. There is a tendency to presume that bankruptcy is an accidental and unpredictable side effect of a commercial society. Such an assumption portrays creditors as hapless victims of irresponsible debtors who make poor choices. In the case of payday lending, it

is more accurate to characterize bankruptcy as a cost of doing business. Mainstream lenders carefully screen borrowers with credit scores, credit reports, and debt-to-income ratios in order to predict which borrowers are capable of taking on additional debt. In contrast, payday lenders primarily rely on their ability to extract payment from borrowers in collection proceedings – rather than predicting before hand which applicants have the ability to repay. Thus, payday lenders profit by intentionally foregoing the screening costs which would normally decrease bankruptcy filings. Quite simply, it is cheaper to lend to debtors who will declare bankruptcy than it is to figure out which debtors are likely to repay.[24] While this may be an acceptable business practice in Wisconsin, an excessive concentration of multiple lenders in one community all using the same business technique is likely to harm public welfare.

It takes a great deal of taxpayer funding to hire the judges, clerks, administrative, and organizational support staff to deal with Milwaukee consumer bankruptcies and debt collection cases. Each judge must have a court room and chambers. Each court house must have the security and custodial resources to run a professional building. Similarly police or sheriff auctions of personal property seized by lenders requires the time and attention of law enforcement authorities. The more bankruptcy and collection cases there are, the more these services cost in sum. Although courts are able to recover some of their costs in court fees, the best estimates suggest taxpayers foot the bill for roughly half of bankruptcy court costs.[25]

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[24] *See* KAREN GROSS, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM 118 (1997) (making a similar argument).

[25] Elizabeth Warren, "What is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics," *Harvard Women's Law Journal* 25 (2002): 19 n.116.

Municipal planners should be free to exercise their discretion to control patterns of municipal development to prevent some areas from absorbing a disproportionate share of the bankruptcies and collection proceedings associated with payday lending outlets.

B. *Excessive and/or Concentrated Payday Lending Outlets will Harm Public Welfare by Raising the Costs of Supervising and Policing Payday Lenders*

The payday lending industry is costly to supervise and police. Compelling empirical evidence has found a systematic pattern of disregard for federal, state, and local regulation in the payday lending industry. For example, the North Carolina Office of the Commissioner of Banks found staggering evidence of disregard for state regulations among North Carolina payday lenders. In 713 examinations of licensed payday lenders over the course of three years, the Office recorded ***8,911*** violations of North Carolina payday lending statutes.[26] In New Mexico, a consumer advocacy organization found only 67 percent of payday lenders were in compliance with state law requiring the provision of information brochures. Fifty-four percent of New Mexico payday lenders displayed a required sign disclosing fees. And, fewer than two in five lenders (39 percent) complied with a rule requiring a reduced version of the sign at all workstations where loans were originated. In all, only 33 percent of New Mexico payday lenders were in total compliance.[27] Finally, an empirical study conducted by this author found 65 percent of payday lenders in the Salt Lake City metropolitan area openly disregarded the federal Truth in

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[26] *Report to the General Assembly on Payday Lending* at 2.

[27] Ray Prushnok, *Payday, Mayday! Payday and title Lender Compliance to Sinage and Brochure Regulations* 7 (New Mexico Public Interest Research Group Education Fund, March 2002).

Lending Act requirement that loan interest rates be orally disclosed in Annual Percentage Rate (APR) format. Ninety-two percent of lenders ignored a state law requiring lenders post a sign with a complete schedule interest rates and fees in their premises.[28]

There is also strong empirical evidence suggesting payday lending industry collection efforts are rife with fraud. For example, studies have found evidence suggesting payday lenders commonly threaten borrowers with criminal prosecution, even though lenders are fully aware no crime has been committed. By referring to ambiguous statutes written to address check fraud payday lenders fool borrowers into believing they may go to jail or prison for failing to pay.

> Payday lenders in Ohio, for example, sue under the "Civil Damages for Crime Victim" statute . . . which provides triple damages to victims of theft offenses, including bad checks. Inspection of court records in Dayton Municipal Courts Division over eight months in 1999 found 381 actions by five payday lenders. Defaulting customers were charged triple damages, 10% interest on the damages, and court costs. The total dollar amount for the judgments from all 381 cases was $285,406. In 60% of the cases, wages were garnished.[29]

Similarly, a Texas regulator testified that in only one year, payday lenders filed 13,000 criminal charges against their customers in one Dallas precinct. Of course it goes without saying, traditional creditors such as banks, credit unions, and savings and loan associations have been unable to use the criminal justice system to collect outstanding debts since debtors prisons were outlawed in the nineteenth century.[30]

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[28]Christopher Peterson, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors,* 2001 UTAH L. REV. 543, 566.

[29]Fox & Mierzwinski, *Show Me the Money*, 10.

[30]*See, e.g.,* John Conyn, Attorney General of Texas, "Be Wary of Payday Loans," *Ask the AG*, available at http://www.occc.state.tx.us, viewed 1 January 2002; Keest, "Stone Soup," 1115-

While payday lending is legal, it is highly regulated at public expense. And, because illegal threats and systematic patterns of lawlessness are commonplace in the payday lending industry, high numbers and concentrations of payday lenders are likely to impose significant strain on the resources of any local agency which seeks to carefully police lenders. Supervising payday lenders is far more time intensive for both local and state authorities than normal businesses. For this reason, the board is justified in carefully scrutinizing applications seeking to bring more payday lending outlets into the community.

C. *Excessive and/or Concentrated Payday Lending Outlets will Harm Public Welfare by Displacing Other Local Businesses, Professionals, and Charities*

The resources of all communities are limited. Payday lenders place particularly severe strains on community resources. When borrowers become entrapped in triple digit interest rate loans, other business and community interests are forced to take a back seat. Although a payday loan might help an individual make one rent payment in the short term, over the long term payday loans make borrowers less able to meet other obligations. Area landlords become less likely to receive rent on time or at all. Ill-advised payday loans can also lead to disruption in utility payments harming telephone companies, electricity providers, and natural gas companies. Servicing high cost debt can also prevent consumers from making medical bill payments, harming local hospitals and doctors. Because payday lenders are far more aggressive in collection efforts than these other businesses, payday lenders often jump to the head of the line

16; Fox & Mierzwinski, *Show Me the Money*, 10; Moss, "Modern Day Loansharking," 1743-44; Deborah A. Schmedemann, "Time and Money," 977.

and collect before other outstanding debts. Contributions to churches and charitable organizations also likely to suffer in areas with high concentrations of payday lending outlets.

Two noted economists have argued that the ancient history of interest rate limits is a result of precisely this problem:

> "[I]n biblical Israel (and even earlier in Babylonia), interest rate restrictions seemed to have been intended to limit the degree to which an individual could become indebted. If the community paid some of the price of bankruptcy (perhaps in having to care for the bankrupt), then the community sensibly wanted to restrict the individuals ability to overcommit himself to loans."[31]

Similarly, we should not be surprised to find payday loan borrowers turn in greater proportions to the state for financial assistance in the form of unemployment insurance, medicaid, food stamps, housing assistance, Earned Income Tax Credits, and Temporary Assistance to Needy Families. Payday loans often preempt and frustrate the tenuous social links between the debtors and other unsuspecting third parties. Although the board is not free to regulate interest rates or other payday lending business practices, the harm to public welfare associated with payday lending justifies the board's regulation of the number and distribution of payday lending outlets within its jurisdiction.

D. *Excessive and/or Concentrated Payday Lending Outlets will Harm Public Welfare by Damaging Area Aesthetics*

The payday lending business model has fundamental characteristics which lend themselves to an unaesthetic public presence. By way of comparison, banks, credit unions, and

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[31] Edward L. Glaeser and Jose Scheinkman, "Neither a Borrower Nor a Lender Be: An Economic Analysis of Interest Restrictions and Usury Laws," *Journal of Law and Economics* 41 (1998): 27.

insurance companies, maintain a relatively low profile. This is because these financial service providers tend to compete through offering lower prices and superior quality services than rival businesses. Banks can trust that if they offer the best prices, word will spread and they will attract customers. Banks also must maintain tasteful public appearance because they invest a great deal of capital in their community reputation.

In contrast, payday lenders do not compete by offering lower prices. Just the opposite is true. Compelling evidence suggests payday lenders actively obscure prices. For example, a nationwide survey found only 37 percent of payday lenders contacted for price information would divulge even a nominally accurate annual percentage rate over the telephone. "Others claimed they 'didn't know' or that the APR was equal to the fee for a two-week loan."[32] Because payday lender prices are so high, most lenders attempt to forestall what economists call "price resistence" by delaying or obscuring true credit costs. In the payday lending industry, lenders compete with one another by attempting to reach customers first and collect the most, rather than lowering prices.

Irrespective of financial problems this may cause, one important side effect of this business model is a tendency toward unaesthetic business appearances. Rather than blending in to an urban or suburban setting, payday lenders must seek to do the opposite. They attempt to lure as many customers as possible with loud promises of "quick cash," "no credit checks," "easy money," and by exhorting citizens to not "wait until payday." This is why payday lenders tend to

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[32]Jean Ann Fox and Ed Mierzwinski, *Show Me the Money! A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* (Washington, D.C.: Consumer Federation of America and U.S. Public Interest Research Group, 2000), 6.

have aggressive advertisements, large jarring signs, and display bold and contrasting colors.

It is well settled that the board has broad discretion in protecting the aesthetics of its community. For example, zoning boards are free to regulate the location of adult book stores and entertainment venues.[33] In comparison, the case for restricting land use by payday lenders is even stronger than the case for restricting the land use of adult entertainment outlets. Unlike payday lending, which is legal at the mere statutory whim of the state legislature, adult entertainment is protected as free speech under the First Amendment to the United States Constitution. Certainly if aesthetic standards are sufficient to curtail constitutionally protected free speech, they are sufficient to justify modest land use restrictions on payday lending.

V. Concluding Remarks

Successful community planing involves preserving a balance of competing interests. Although in Wisconsin payday lending is currently legal, with payday lenders, a little goes a long way. Simply because the state legislature has seen fit to legalize payday lending, it does not follow that payday lenders may establish an unlimited number of outlets anywhere they please, irrespective of the wishes of municipal planing authorities. Payday lending has serious consequences for the public welfare. An excessive number or concentration of payday lending outlets can strain the resources of the judiciary, law enforcement, area land lords, utilities, medical providers, as well as taxpayers. Moreover, unaesthetic payday lending outlets can soil the quality of life for all members of the community. For these reasons, the Board of Zoning

[33] City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986).

Appeals would be well advised to carefully scrutinize and rigorously exercise its broad discretion over payday lender land use applications.

ADDENDUM ONE

The author considered the following information sources and publications in forming the opinions expressed herein:

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ADDENDUM TWO

I am an Assistant Professor of Law at the University of Florida, Fredric G. Levin College of Law, where I teach courses in consumer law, commercial law, and bankruptcy. My scholarly interest have focused on the risks, benefits, and law surrounding high cost consumer credit transactions. I have written a 420 page academic book entitled *Taming the Sharks: Towards a Cure for the High Cost Credit Industry*, which is currently in the final stages of publication in the Law, Politics, and Society series of the University of Akron Press. I recently released an article addressing the history of payday lending and other forms of high cost credit in the *Florida Law Review*. I have received several awards for my prior research on consumer credit in general and payday lending in particular, including: First prize in the California Bankruptcy Association's national Joseph Bernfeld Bankruptcy Law Writing Competition, the 2001Utah State Bar Business Law Writing Award, and the Mariner S. Eccles Research Fellowship in Political Economy.

Prior to joining the faculty at the University of Florida I served as a consumer advocate with the United States Public Interest Research Group in Washington, D.C. U.S. PIRG is a non-profit think tank and federal lobbying organization. My responsibilities included include preparing empirical studies and lobbying United States Senators and Congressional Representatives on consumer credit legislation including bankruptcy law, Truth in Lending, Community Reinvestment, Fair Debt Collection Practices, and other debtor/creditor rights issues. I have also served as judicial clerk on the United States Court of Appeals for the Tenth Circuit. I

am a member of the Conference on Consumer Finance Law and hold a Juris Doctorate from the University of Utah where I graduated third in my class and was inducted into the Order of the Coif.

I have agreed to provide my testimony without compensation as a matter of public service.