

LISKOW & LEWIS

A Professional Law Corporation

Liskow.com

701 Poydras Street, Suite 5000
New Orleans, Louisiana 70139
Main 504.581.7979
Fax 504.556.4108

December 10, 2021

Writer's Name
Louis E. Buatt

Direct Dial: (504) 556-4082
lbuaatt@liskow.com

Via Email

Hon. J. Sterling Snowdy
40th Judicial District Court, Division C
P.O. Box 308
Edgard, LA 70049
dive@stjohnclerk.org

Re: The Descendants Project, Jocyntia Banner, and
Joyceia Banner v. St. John the Baptist Parish, et al
40th JDC No. 77305, Division C
Our File: 32686.0002

Dear Judge Snowdy:

Please find attached hereto a copy of Greenfield's Memorandum in Opposition of Mandamus and in Support of Intervenor's Exceptions in connection with the hearing in the above-captioned matter scheduled for December 16, 2021.

Sincerely,



Louis E. Buatt

LEB:sb
Attachment

cc: Pamela Spees – via Email - pspees@ccrjustice.org & U.S. Mail
Bill Quigley – via Email – quigley77@gmail.com & U.S. Mail
Samuel Accordo – via Email – accordo@rtconline.com & U.S. Mail

40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

NO. 77305

DIVISION "C"

**THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER**

VERSUS

**ST. JOHN THE BAPTIST PARISH,
through its Chief Executive Officer,
Parish President Jaclyn Hotard, et al.**

FILED: _____

DEPUTY CLERK

**MEMORANDUM IN OPPOSITION OF MANDAMUS AND IN SUPPORT OF
INTERVENOR'S EXCEPTIONS**

MAY IT PLEASE THE COURT:

Intervenor, Greenfield Louisiana, LLC, a Delaware corporation ("Greenfield"), through undersigned counsel, respectfully submits this memorandum in opposition of Plaintiffs' Petition for Writ of Mandamus in the above captioned mater, which is set for hearing in this Court on December 16 at 10:00 a.m., and in support of Intervenor's exceptions set forth in its Petition for Intervention. Defendants have been ordered to show cause why they should not be ordered to remove all zoning designations originating from Parish Ordinance 90-27. Intervenor respectfully suggests that Defendants should not be ordered to remove all zoning designations originating from Parish Ordinance 90-27 and that Plaintiffs' Petition for Writ of Mandamus should be dismissed with prejudice, at Plaintiffs' cost.

I. Statement of Facts

Ordinance 90-27 was adopted by the St. John the Baptist Parish Council (the "Parish Council") on April 19, 1990, by a unanimous vote of eight (8) yeas to zero (0) nays with one recusal. Ordinance 90-27 zoned land now owned by Greenfield as I-3, which is an industrial zoning district permitting various industrial uses including grain elevators. The Plaintiffs, who include residents neighboring the land owned by Greenfield and rezoned pursuant to Ordinance 90-27, are seeking to nullify the ordinance pursuant to a writ of mandamus naming St. John the

Baptist Parish (the “Parish), the Parish Council, the Parish Planning Commission, and the Parish Department of Planning and Zoning as defendants. Greenfield, as owners of land zoned I-3 pursuant to Ordinance 90-27, have intervened and are seeking dismissal of the Plaintiffs’ Petition for Writ of Mandamus.

II. Discussion

A. Plaintiffs’ Petition for Writ of Mandamus is an unauthorized use of summary proceedings and should be dismissed.

Mandamus is an extraordinary remedy that shall not be granted where ordinary means provide adequate relief. *Hoag v. State*, 2004-0857 (La. 12/1/04), 889 So. 2d 1019, 1023. A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. La. Code of Civ. Proc. art. 3863. Ministerial duties are duties in which no element of discretion is left to the public officer, and mandamus will not lie if the public officer is vested with any element of discretion. *See Hoag*, 889 So. 2d at 1023. The remedy of mandamus is not available to command the performance of an act which contains any element of discretion. *Allen v. St. Tammany Parish Police Jury*, 96-0938 (La. App. 1 Cir. 2/14/97), 690 So.2d 150, 153, writ denied, 97-0599 (La. 4/18/97), 692 So.2d 455 (citing *Caddo Parish Fire Districts Two, Three, Five and Six v. Clinigan*, 26453 (La. App. 2 Cir. 1/15/95), 649 So. 2d 156, 159). Mandamus will not lie in matters in which discretion and evaluation of evidence must be exercised. *Id.* (citing *Messer v. Department of Corrections, Louisiana State Penitentiary*, 385 So. 2d 376, 378 (La. App 1st Cir.), writ denied, 386 So. 2d 1379 (La. 1980)). In *Allen v. St. Tammany Parish Police Jury*, neighboring landowners alleged that the local police jury legislative body violated its own zoning ordinance in approving a subdivision development. The parish filed an exception challenging the use of the mandamus procedure as an unauthorized use of summary proceedings. *Id.* at 152. The court found that the plaintiff was not entitled to a writ of mandamus, because the action of the police jury legislative body approving a subdivision was one falling within its discretion. *Id.* at 154. Further, in *Commodore v. City of New Orleans*, 2019-0127 (La. App. 4 Cir. 6/20/19), 275 So. 3d 457, 469, the court reasoned that the City Council had discretion to adopt zoning ordinances and held that a vote to adopt or deny a proposed ordinance was within the City Council’s discretion, and thus not a ministerial duty in which a mandamus could be issued.¹ Similarly, the adoption of a zoning ordinance by the Parish

¹ *Folsom Rd. Civic Ass’n v. Par. of St. Tammany Through St. Tammany Par. Council*, 425 So.2d 1318, 1320 (La. App. 1 Cir. 1983), cited by Plaintiffs, is in line with the aforementioned cases.

Council is a matter that is within the legislative discretion of its council members as members of the local legislative body, and a writ of mandamus is not an appropriate procedure through which to seek the ordinance's invalidation. As it relates to Ordinance 90-27, mandamus would only be appropriate to compel a Parish executive official to exercise its ministerial duty to enforce the ordinance as adopted if that were an issue, but that is not an issue and mandamus cannot be used to compel a Parish official to remove a zoning designation that it has a duty to enforce.

Accordingly, Plaintiffs' Petition for Writ of Mandamus is an unauthorized use of summary proceedings and should be dismissed.

B. Plaintiffs' petition fails to state a right of action and should be dismissed.

Plaintiffs do not have an interest in the property that has been zoned pursuant to the ordinance that they are seeking to nullify. Greenfield is an owner of the property zoned pursuant to the ordinance in question. The procedure to change a zoning designation enacted by the Parish Council is for the landowner to apply to the Parish to change the zoning of land that it owns or for the Parish Council to make the change on its own. St. John the Baptist Code of Ordinances, Sec. 113-77. Greenfield, as owner, has not applied to change the zoning of its parcel that was zoned pursuant to Ordinance 90-27, and the Council has not made such a motion on its own. Accordingly, the plaintiffs do not have a right of action to seek to rezone a parcel that it does not own, and its petition for writ of mandamus should be dismissed.

C. Plaintiffs' petition fails to state a cause of action and should be dismissed, because the plaintiffs have failed to state a legitimate basis upon which Ordinance 90-27 should be nullified.

1. The Parish Council had the authority to adopt Ordinance 90-27.

As asserted by Plaintiffs in their petition, the St. John the Baptist Parish Council is vested with the authority to exercise all legislative power, including the adoption of zoning ordinances. The Louisiana constitution authorizes local parish governments to adopt home rule charters. *See* La. Const. art. VI, §5. St. John the Baptist Parish (the "Parish") has adopted and operates under a Home Rule Charter (the "Parish Charter") under authority of Article VI, Section 5 of the Louisiana Constitution. *See* St. John the Baptist Home Rule Charter, Article I. While the Louisiana Legislature cannot enact laws affecting the powers and functions of local home rule

There, mandamus was appropriate only to enforce the parish council's compliance with an ordinance requiring the ministerial act of notice to adjoining landowners prior to approving a project. Mandamus was not used to address the parish council's legislative discretion over the final project approval.

charter governments, the home rule charters are subject to and cannot be inconsistent with the Louisiana Constitution. *See* La. Const. art. VI, §5(A) and §6. Subject to uniform procedures established by law, the Louisiana constitution authorizes parish governments to (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. *See* La. Const. art. VI, §17. The Parish Charter provides that the Parish shall have and exercise such powers as may be granted to a local governmental subdivision by the State Constitution and the laws of the State of Louisiana. *See* St. John the Baptist Home Rule Charter, Article II. The Charter further expressly provides that the Parish shall have the authority to exercise general police power. *See id.* Authority to enact zoning ordinances flows from the police power of the governmental body. *A. Copeland Enterprises, Inc. v. City of New Orleans*, 372 So. 2d 764, 766 (La. Ct. App. 1979). In order to promote the health, safety, morals or general welfare of the community, Louisiana enabling legislation provides that local governing authorities may adopt zoning regulations and establish zoning districts. *See* La. R.S. § 33:4780.40-41. The Parish Charter provides that the governing authority for the Parish shall be the Parish Council. *See* St. John the Baptist Home Rule Charter, Article III(A)(1). The Charter further provides that the Council shall be vested with and shall exercise all legislative power in the Parish. *See* St. John the Baptist Home Rule Charter, Article III(A)(7)(a). Specifically, the Parish Charter provides that the Parish Council may enact any ordinance necessary, requisite or proper to promote, protect, and preserve the general welfare, safety, health, peace and good order of the Parish not inconsistent with the Constitution of the State of Louisiana or denied by general law or the Parish Charter. *See* St. John the Baptist Home Rule Charter, Article III(A)(7)(b). Accordingly, the Parish Council had the authority to adopt Ordinance 90-27.

2. Actions of the Parish President have no bearing on the validity Ordinance 90-27.

While the Parish Charter provides that the Parish Council is the governing authority of the Parish with the authority to enact ordinances, it provides that the Parish President is the chief executive officer of the Parish who is vested with the executive power of the Parish. St. John the Baptist Home Rule Charter, Article III(B)(1) and (3)(a). While the Parish Charter vests the Parish Council with legislative power, it provides that the Parish President is responsible for

carrying out the polices adopted by the Parish Council. St. John the Baptist Home Rule Charter, Article III(B)(3)(a) (emphasis added). Accordingly, it was the Parish Council who had the authority to adopt Ordinance 90-27, and it was the responsibility of the Parish President to enforce the ordinance as adopted by the Council. The Plaintiffs' numerous references to the criminal record of former Parish President Lester Millet, Jr. and allegations of fraud have no bearing on the adoption of the ordinance, because the Parish Council, and not the Parish President, had the authority to adopt the ordinance.

The Plaintiffs suggest that the actions of the President are relevant because the Parish President signed Ordinance 90-27 and had the power to approve or veto the ordinance under the Parish Charter. However, an ordinance adopted by the Parish Council becomes effective regardless of whether the Parish President approves it or does not specifically disapprove it. See St. John the Baptist Home Rule Charter, Article IV(C)(2). Even if the Parish President should take the step to veto the ordinance, the Parish Council has the right to override that veto, by a vote of a majority plus one. See St. John the Baptist Home Rule Charter, Article IV(C)(3). Ordinance 90-27 was approved by the Parish Council by a unanimous vote of eight (8) yeas to zero (0) nays with one recusal, which rendered any veto moot. Accordingly, it is the Parish Council that had the authority to adopt the ordinance. The actions of the Parish President would have only been potentially relevant if he had chosen to exercise his veto power. However, in the instance of the adoption of Ordinance 90-27, the Parish President did not exercise his veto power and the Council would have had the votes to override the veto even if it had been exercised. Therefore, actions of the Parish President have no bearing on the adoption of Ordinance 90-27. Because there is no cause of action to nullify a zoning ordinance on the basis of the actions the Parish President holding merely executive authority, the Plaintiffs' Petition for Writ of Mandamus should be dismissed.²

3. Plaintiffs have failed to demonstrate any actions on the part of the Parish Council that would justify invalidation of Ordinance 90-27.

² Plaintiffs cite only one case demonstrating a finding of absolute nullity, and it does not support a cause of action to nullify a zoning ordinance adopted by the parish legislative body on the basis of actions of a parish executive. In *Davis v. Town of St. Gabriel*, 2001-0031 (La. App. 1 Cir. 2/15/02), 809 So.2d 537, the court found that a contract for compromise entered into by a town was an absolute nullity because the town failed to follow the legal procedure for approving the contract, which should have included prior public notice and passage of an ordinance. Here, Plaintiffs seek to nullify a zoning ordinance, rather than a contract, and Plaintiffs have not alleged any illegal procedure in the passage of that zoning ordinance. Plaintiffs have only alleged illegal acts of one individual, the Parish President, and have not alleged how those acts had bearing on the Parish Council's passage of the ordinance.

In Louisiana, zoning is a legislative function carried out by the local politically elected governing legislative body, and the discretionary action of a local legislative body can only be invalidated upon showing that the local authority acted without authority, or acted arbitrarily, capriciously or with any calculated or prejudicial lack of discretion. *Allen v. St. Tammany Parish Police Jury*, 690 So.2d at 154. Local governments generally have legislative authority to regulate land use, which decisions will not be disturbed by the courts unless the result of the legislation is found to be arbitrary and capricious, therefore resulting in an unconstitutional taking of property without due process of law. *See Palermo Land Co., Inc. v. Planning Commission of Calcasieu Parish*, 561 So.2d 482, 492 (La. 1990). Because zoning is a legislative function, courts are restrained from substituting their own views for those of the legislative body, except when there is an abuse of discretion or an excessive use of power. *A. Copeland Enterprises, Inc. v. City of New Orleans*, 372 So. 2d at 766 (citing *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So. 2d 659 (La. 1974)). The test of whether the action of a governmental body was arbitrary or capricious is whether it is reasonable under the circumstances. *King v. Caddo Par. Comm'n*, 97-1873 (La. 10/20/98), 719 So.2d 410, 418. The plaintiff bears the burden of proving that a governing authority acted arbitrarily when making a land use decision. *Id.* at 419. Not only does the action of the Parish President have no bearing on the actions of the Parish Council, but the plaintiffs have also failed to prove that any actions of the Parish Council members were arbitrary and capricious.

4. Prior opposition at public hearings have no bearing on the legitimacy of the adoption of Ordinance 90-27.

Plaintiffs recite numerous examples of public opposition during public hearings at the time of the consideration of Ordinance 90-27 by the Parish Council. While it was in the discretion of the Parish Council to consider this opposition as part of the legislative process in adopting the ordinance, the Parish Council had the discretion to consider and then accept or reject testimony presented. When reviewing a land use decision, Louisiana courts generally defer to the legislative political body's decision unless it is arbitrary and capricious. In *Palermo Land Co., Inc. v. Planning Commission of Calcasieu Parish*, the Louisiana Supreme Court stated, "It is not the province of the courts to take issue with the council, we have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is the ballot--not the courts." 561 So.2d at

491. Accordingly, opposition at the time of public hearings relating to the adoption of the ordinance is irrelevant because a legislative decision was made by the Parish Council after hearing that testimony, and Plaintiffs have not demonstrated that the Parish Council members acted arbitrarily or capriciously in adopting Ordinance 90-27.

5. Current use of the property has no bearing on the legitimacy of Ordinance 90-27.

Plaintiffs allege that the property zoned by Ordinance 90-27 is being used as agricultural land rather than industrial uses as allowed under the I-3 designation established by the Ordinance 90-27. However, the current use of the property prior to or subsequent to the adoption of a zoning ordinance has no bearing on the zoning of the property. The use does not determine the zoning designation, but rather the zoning designation determines the permitted use. A zoning designation sets forth the uses that will be permitted going forward on the property zoned for those uses, and current uses are only relevant to whether or not the current use is a permitted use or non-conforming use. *See* St. John the Baptist Code of Ordinances, Sec. 113-48. Accordingly, any uses permitted under the St. John the Baptist Parish I-3 zoning district would be allowed upon any property zoned pursuant to Ordinance 90-27 regardless of the actual uses of the property prior to or subsequent to the adoption of the ordinance. In situations where the landowner seeks a “use by right” in compliance with the applicable zoning, the use by right should be presumptively valid and approved. *See Zachary Housing Partners, L.L.C. v. City of Zachary*, 2012-1952 (La. App. 1 Cir. 10/10/13); 185 So.3d 1, 8, *writ denied*, 2013-2615 (La. 2/7/14), 131 So.3d 864; *K.G.T. Holdings, LLC v. Par. of Jefferson*, 14-872 (La. App. 5 Cir. 3/25/15), 169 So.3d 628, 633, *writ denied*, 2015-0810 (La. 6/19/15); 172 So.3d 652. Accordingly, Greenfield would have a right to use the property for uses permitted in I-3 regardless of the current use of the property, and the current use of the property has no bearing on the validity of Ordinance 90-27.

6. Unofficial maps have no bearing on the legitimacy of Ordinance 90-27.

Plaintiffs reference inconsistencies in a “Future Land Use Map” from the early stages of the process of developing a comprehensive plan. Such preliminary maps are of no consequence because the final Comprehensive Plan adopted by the Parish is the final authority. Plaintiffs also refer to multiple maps on file and maps dated prior to the adoption of the official zoning map. Such maps are of no consequence because the ordinance adopted by the Council is the law and is

controlling for the zoning designation. Regardless of whether there are any inconsistencies in any Parish maps, it is the ordinance itself designating the zoning district that established the zoning district and not the maps illustrating those zoning districts. Even if there were an error by the staff in preparing the maps illustrating the zoning districts adopted by ordinance, mandamus would only be appropriate for the staff to correct the ministerial error in preparing the maps for consistency with the ordinance rather than a mandamus to nullify the ordinance for inconsistency with the map. In *Goux v. St. Tammany Parish Government*, 2013-1387 (La. App. 1 Cir. 10/24/14), 156 So.3d 714, 723-24, *writ not considered*, 2014-2471 (La. 2/13/15), 158 So.3d 828, the court found that mandamus was appropriate to correct a ministerial mapping error by the parish staff to properly reflect the zoning designation for a parcel adopted by ordinance of the parish council. Accordingly, to the extent there are any inconsistencies between any maps on file and an ordinance, the ordinance shall control. Accordingly, if any mandamus action should lie, it would be to correct maps for consistency with the ordinances, and not to nullify the ordinances for inconsistencies with any maps.

7. The 300 foot buffer provided for in Ordinance 90-27 has no bearing on the validity of the ordinance.

Ordinance 90-27 provided for an amendment to the zoning map providing for an I-1 buffer of 300 feet within the I-3 zone where an I-3 zone abuts an R-1 zone. Plaintiffs suggest that this 300 foot buffer was a departure from the 2000 foot distance requirement provided for in St. John the Baptist Parish Code of Ordinances, Sec. 113-410. However, section 113-410 appears to have been enacted in 2018, which is long after the adoption of Ordinance 90-27. The Council could not have departed from a provision of its ordinance that had not yet been adopted. Accordingly, the inclusion of the 300 foot buffer in Ordinance 90-27 does not suggest that the Council acted arbitrarily or capriciously and has no bearing on the validity of the ordinance.

8. Plaintiffs' complaints regarding why Greenfield's property should not be zoned I-3 have no bearing on the validity of Ordinance 90-27.

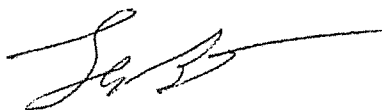
Ordinance 90-27 zoned the property I-3, which permitted certain industrial uses including a grain elevator. The ordinance did not approve a particular project, but approved the rezoning of land for particular uses. Plaintiffs' comments relating to Greenfield's proposed use of the property and whether or not its land is appropriate for I-3 zoning would have only been relevant at Parish Council public hearings at the time of the adoption of the ordinance, or public hearings

in the future should the Parish Council consider rezoning the property owned by Greenfield. However, now that the ordinance has been adopted, such comments have no bearing on whether the Parish Council acted arbitrarily or capriciously in adopting Ordinance 90-27 and are not a basis for nullifying the ordinance.

III. Conclusion

For the foregoing reasons, Intervenor respectfully requests that Defendants not be ordered to remove all zoning designations originating from Parish Ordinance 90-27 and that Plaintiffs' Petition for Writ of Mandamus be dismissed with prejudice, at Plaintiffs' cost.

Respectfully submitted,



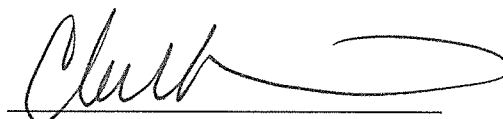
Louis Buatt (Bar No. 19503)
James L. Breaux (Bar No. 26817)
Clare M. Bienvenu (Bar No. 29092)
LISKOW & LEWIS, APLC
701 Poydras Street, Suite 5000
New Orleans, LA 70139-5099
Telephone: (504) 581-7979
Facsimile: (504) 556-4108
Email: lbuatt@liskow.com
Email: jlbreaux@liskow.com
Email: cbienvenu@liskow.com

Attorneys for Greenfield Louisiana, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been served upon all known counsel of record by electronic mail and by depositing the same in the U.S. Mail, postage prepaid and properly addressed.

New Orleans, Louisiana, on this 10th day of December, 2021.



Clare M. Bienvenu