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December 9, 2021

The Honorable Eliana DeFrancesch
Clerk of Court, St. John the Baptist Parish
P.O. Box 280
Edgard, Louisiana 70049

RE: The Descendants Project, Jocyntia Banner and Joyceia Banner vs. St. John The Baptist Parish through its Chief Executive Officer, Parish President Jaclyn Hotard; St. John The Baptist Parish Council, St. John The Baptist Parish Planning Commission; And St. John The Baptist Parish Department Of Planning and Zoning, through its Director, Rene Pastorek
Suit #77-305C, 40th JDC
Our File #1135.37-S-21

Dear Ms. DeFrancesch:

Enclosed please find an original and one copy of Defendants, St. John the Baptist Parish, et als, Dilatory Exception of Unauthorized Use Of Summary Proceeding with Memorandum in Support which I am filing with the court on behalf of the defendant, St. John The Baptist Parish, in the above captioned matter. Please return a conformed copy thereof to me in the enclosed self addressed stamped envelope.

Thanking you in advance for your cooperation.

With kindest personal regards, I am

Very truly yours,

Samuel J. Accardo, Jr.

SJA:dr
Enclosures

cc: Hon. J. Sterling Snowdy, Judge, Div. C, via email only
Pamela C. Spees, Esq., via email only
William P. Quigley, Esq., via email only
Louis E. Buatt, Esq., via email only

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

NO: 77,305

DIV: C

THE DESCENDANTS PROJECT, JOCYNTIA BANNER and JOYCEIA BANNER
VERSUS

ST. JOHN THE BAPTIST PARISH; ST. JOHN THE BAPTIST PARISH COUNCIL, ST.
JOHN THE BAPTIST PARISH PLANNING COMMISSION; and ST. JOHN THE
BAPTIST PARISH DEPARTMENT OF PLANNING AND ZONING.

FILED: _____

DY.CLK:

DILATORY EXCEPTION OF
UNAUTHORIZED USE OF SUMMARY PROCEEDING

NOW INTO COURT, through undersigned counsel, and solely for the purpose of the above dilatory exception and opposition to Plaintiffs Memorandum comes: ST. JOHN THE BAPTIST PARISH; ST. JOHN THE BAPTIST PARISH COUNCIL; ST. JOHN THE BAPTIST PARISH PLANNING COMMISSION; and ST. JOHN THE BAPTIST PARISH DEPARTMENT OF PLANNING AND ZONING (herein referenced collectively as “the Parish”), “Defendants” herein, who respectfully plead the Dilatory Exception of Unauthorized Use of Summary Proceeding; all in accordance with Louisiana *Code of Civil Procedure Article 926, et al*, and for reasons fully set forth in Defendants attached Memorandum: 1) In support of its dilatory exception above; and 2) In opposition to Plaintiff’s Petition For A Writ Of Mandamus in this matter, move this Honorable Court to grant its above and foregoing exception dismissing Plaintiff’s petition..

Respectfully submitted:

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Attorneys for Defendants: Parish

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By: 
Samuel J. Accardo, Jr. #24,007

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

NO: 77,305

DIV: C

THE DESCENDANTS PROJECT, JOCYNTIA BANNER and JOYCEIA BANNER

VERSUS

ST. JOHN THE BAPTIST PARISH; ST. JOHN THE BAPTIST PARISH COUNCIL, ST.
JOHN THE BAPTIST PARISH PLANNING COMMISSION; and ST. JOHN THE
BAPTIST PARISH DEPARTMENT OF PLANNING AND ZONING.

FILED: _____

DY.CLK:

MEMORANDUM IN SUPPORT OF DILATORY EXCEPTION OF
UNAUTHORIZED USE OF SUMMARY PROCEEDING
AND IN OPPOSITION TO PLAINTIFF'S
PETITION FOR WRIT OF MANDAMUS

MAY IT PLEASE THE COURT:

It is anticipated that Intervener in this matter: Greenfield of Louisiana, LLC, will (or has) file peremptory exceptions of No Cause of Action and No Right of Action with argument in support; in addition to Greenfield's anticipated opposition to Plaintiff's mandamus petition. Accordingly, the Parish limits its argument herein to its dilatory exception of Unauthorized Use of Summary Proceedings and opposition to Plaintiff's mandamus action.

For reasons more fully set forth below, the Defendant, Parish, respectfully avers that the relief sought by Plaintiff in this matter via writ of mandamus is misplaced and is an unauthorized and improper use of summary proceedings. Notwithstanding that the Parish supports Greenfield's Peremptory Exceptions of No Cause of Action and No Right of Action as argued, the relief sought by Plaintiffs in their mandamus petition requires the use of discretion by this Court and is; therefore, improper and unauthorized.

Alleged Facts

Plaintiffs base their lawsuit on the St. John The Baptist Parish Council's 1990 re-zoning of a certain tract of land in Wallace, St. John The Baptist Parish, Louisiana. The subject tract of land was re-zoned, via Ordinance 90-27, by unanimous vote of the Parish Council from a residential designation to a heavy industrial (I-3) zoning classification. No council member opposed the vote in support of Ordinance 90-27.

For the past 31 years, the subject Wallace property has remained designed I-3. Plaintiffs now allege that the above re-zoning of the Wallace tract by the parish council in 1990 was part of various illegal activities committed by the Parish's President, Lester Millet. Plaintiff's allege that Millet orchestrated a scheme to personally benefit from the Formosa corporation's construction of a heavy industrial facility on the Wallace tract property.¹ Plaintiffs alleged that Millet was attempting to profit personally from the Formosa facility location. However, Formosa eventually abandoned any anticipated project or construction upon the subject property.

Plaintiffs go on to allege that, due to various alleged illegal acts and schemes by Mr. Millet and a co-conspirator [Matherne, who was not a parish official] in advocating for the above zoning change, the entire process of the above 1990 re-zoning of the subject property by the parish council was an absolute nullity as derogating from laws enacted for the protection of the public interest.² Plaintiffs fail to allege that any particular council member, or members, during the above 1990 unanimous vote to re-zone the subject land to I-3, conspired with Millet to pass Ordinance 90-27. It is not disputed that the St. John The Baptist Parish Council, by Parish Charter, was [is] the specific governing body with the authority to pass, and adopt, certain ordinances for the Parish. Further, the Parish Council could legally promulgate and adopt ordinances under Parish Charter without the approval of the parish president.

Plaintiff's Petition for a Writ of Mandamus in this case consist of 169 paragraphs and 31 pages of allegations; many of which are not germane to the Defendant's (Parish) procedural exception and opposition herein.

Plaintiff's go on to pray that this Court; summarily, order the Parish to take five specific actions offering Plaintiff's relief. Plaintiffs ask this Court to use discretion in summarily ordering that Ordinance 90-27 is an absolute nullity. Plaintiff's further pray that this Court rule upon future governmental procedures and actions; none of which are actionable nor proper in Mandamus.

¹ Plaintiff's petition at Page 1 "Introduction"

² Plaintiff's petition at Page 2, paragraph 2

However, Plaintiffs show their hand as to the actual relief they seek. Plaintiffs clearly state on the face of Plaintiff's Petition For a Writ of Mandamus:

"RELIEF SOUGHT

WHEREFORE, Petitioner respectfully request that, after due proceedings had, this Court:

a. Enter a **declaratory judgment** that Ordinance 90-27 is an absolute nullity;"³

[Emphasis ours]

Accordingly, it is clear that Plaintiffs alleged claims are for declaratory relief, not mandamus. Respectfully, a court cannot issue a mandamus to declare the legal actions of a political subdivision's governing body, in enacting an ordinance, an "absolutely nullity".

Law And Argument Of Defendant

Louisiana law on Mandamus provides:

"Mandamus is a writ directing a public officer, a corporation or an officer thereof, or a limited liability company or a member or manager thereof, to perform any of the duties set forth in Articles 3863 and 3864."⁴

Art. 3862. Mandamus; issuance of

A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice; provided, however, that no court shall issue or cause to be issued a writ of mandamus to compel the expenditure of state funds by any state department, board or agency, or any officer, administrator or head thereof, or any officer of the state of Louisiana, in any suit or action involving the expenditure of public funds under any statute or law of this state, when the director of such department, board or agency, or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

Art. 3863. Person against whom writ directed

A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law, or to a former officer or his heirs to compel the delivery of the papers and effects of the office to his successor.

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 trial court's findings of fact in a mandamus proceeding are subject to a manifest error standard of review. *Town of Sterlington v. Greater Ouachita Water Company*, 52,482 (La. App. 2 Cir. 4/10/19), 268 So.3d 1257, 1265, writs denied, 2019-0913 (La. 9/24/19), 279 So.3d 386 and 2019-0717 (La. 9/24/19), 279 So.3d 386, 931. Further, it is well settled law in this state that Mandamus is not a legal remedy to

³ Plaintiff's petition, Page 31

⁴ La. CCP Art. 3861

command performance of any action by any governmental body or public official to which any element of discretion is applied. *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) [Emphasis Ours].

In the present case, Plaintiffs would have this Court; incorrectly, assume facts not in evidence to make a judicial determination [discretion] as to whether the Parish Council's actions of 30 years ago constitute an absolute nullity.

Plaintiffs actually recognize that Mandamus is improper in this matter as a request that this Court exercise discretion. On the face of their Petition, Plaintiffs aver that they are not asking this Court to consider the wisdom or substance of Ordinance 90-27 or substitute its discretion for that of the Parish Council when it comes to zoning and land use in the parish.⁵ However, this is precisely what Plaintiffs are asking that this Court rule upon; which requires the use of the Court's discretion. Plaintiffs seek to have this Court, by a Writ of Mandamus, order that Ordinance 90-27 be nullified and scrubbed from the record. Plaintiffs move this Court to: Order the Parish to remove zoning designations, order the Parish to notify Wallace property owners, et als, of the zoning correction and ordinance invalidation, undertake a comprehensive review of zoning practices, and implement policies on how to better comply with zoning laws.⁶ No law or ordinance of this parish or state provides for the above actions. This Court cannot simply order actions of a political subdivision of the state which are not simply ministerial in nature and in furtherance of a promulgated law or ordinance. All of the above actions prayed for by Plaintiffs are not actions which are properly before this Honorable Court on a Writ of Mandamus.

Plaintiffs properly cite, in their memorandum in support:

“It is a well established principle in the jurisprudence of this state that mandamus is an extraordinary remedy and may be resorted to only under extraordinary circumstances.” *W. Carroll Nat. Bank of Oak Grove v. W. Carroll Par. Sch. Bd.* 136 So.2nd 699, 701-01 (La. Ct. App. 1961)

Notwithstanding whether Plaintiffs have a cause or right of action in this matter, which the Parish maintains they do not, the extensive relief sought by Plaintiffs via mandamus cannot be

⁵ Plaintiff's Memorandum In Support, Page 9, Paragraph 2

⁶Plaintiff's Petition at Page 31, b-e

granted by this Court by order to the Parish's governing authority to perform a simple ministerial act.

Conclusion

The Plaintiffs have failed to state both a cause and rights of action in this matter. Plaintiffs Petition for a Writ of Mandamus is an unauthorized and improper use of summary proceedings. The relief sought by Plaintiffs in their 169 paragraph petition is extensive and not capable of relief sought by mandamus for compelling a simple ministerial act. Mandamus is improper where the Court is required to exercise discretion in granting the relief sought. While Plaintiffs allege, on the face of their petition, that they are not asking this Court to exercise discretion, the declaration of Ordinance 90-27 as "an absolute nullity" is not merely ministerial and certainly requires this Court to use discretion in assuming facts not in evidence. For the above and foregoing reasons, Defendant, St. John The Baptist Parish, respectfully moves this Honorable Court to GRANT its Dilatory Exception of Unauthorized Use of Summary Proceedings, dismissing Plaintiff's Petition For Writ Of Mandamus at Plaintiff's cost. Defendant, St. John The Baptist Parish, further hereby joins Intervener: Greenfield Of Louisiana, LLC, in moving this Court to GRANT Intervener's Peremptory Exceptions of No Cause of Action and No Right Of Action; dismissing Plaintiffs claims at their cost.

Respectfully submitted:

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By: 
Samuel J. Accardo, Jr. #24,007

CERTIFICATE OF SERVICE

I hereby certify and affirm that a copy of the above and foregoing pleading and memorandum has been served on the Court, and all counsel of record herein, on this 9th Day of December, 2021, by: U.S. Mail 1st Class, facsimile transmission, and/or email, properly addressed.


Samuel J. Accardo, Jr. #24,007

MEMORY TRANSMISSION REPORT

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*** SUCCESSFUL TX NOTICE ***



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FACSIMILE TRANSMITTAL SHEET

TO: Honorable Eliana DeFrancesch
FROM: Samuel J. Accardo, Jr.
COMPANY: Clerk of Court, 40TH JDC
DATE: December 9, 2021
FAX NUMBER: 985-497-3972
TOTAL NO. OF PAGES INCLUDING COVER: 8
PHONE NUMBER: 985-497-3331
SENDER'S REFERENCE NUMBER: Our File #1135.37-S-21
YOUR REFERENCE NUMBER:
RE: The Descendants Project, Jocyntia Banner and Joyceia Banner vs. St. John The Baptist Parish through its Chief Executive Officer, Parish President Jaclyn Hotard; St. John The Baptist Parish Council, St. John The Baptist Parish Planning Commission; And St. John The Baptist Parish Department Of Planning and Zoning, through its Director, Rene Pastorek Docket #77-305, Div. C, 40th JDC
CC: Hon. J. Sterling Snowdy, Judge, Div. C
Via email only
All Counsel of Record via email only:
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URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY HARD COPY WILL NOT FOLLOW

NOTES/COMMENTS: Please fax file St. John the Baptist Parish's Dilatory Exception of Unauthorized Use Of Summary Proceeding with Memorandum in Support in the above captioned matter. The Hard copy will follow by U.S. mail.

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CC: Hon. J. Sterling Snowdy, Judge, Div. C Via email only All Counsel of Record via email only: Pamela C. Spees, Esq. William P. Quigley, Esq. Louis E. Buatt, Esq. EMAIL: divc@stjohnclerk.org pspees@ccrjustice.org quigley77@gmail.com lbuatt@liskow.com

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