

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,
Et als

St. John the Baptist Parish Clerk of Court

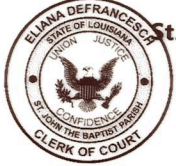
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Filed: LAPLACE, LOUISIANA

Filed: February 13, 2023

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DEPUTY CLERK



MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel comes ST. JOHN THE BAPTIST PARISH ("the Parish"), made original Defendant in the above matter, who moves this Honorable Court for summary judgment pursuant to articles 966 and 967 of the Louisiana Code of Civil Procedure.

1.

In the interest of judicial efficiency and to avoid extensive duplication of argument in this matter, the Parish joins the argument of Greenfield of Louisiana, LLC ("Greenfield") previously filed in Greenfield's own Motion for Summary Judgment herein. Specifically, the Parish and Greenfield are co-defendants to the Plaintiff's actions and Defendants defend the exact same allegations and issues of fact and law.

2.

The Parish is entitled to summary judgment against Plaintiffs: the Descendants Project, Jocyntia Banner, and Joyceia Banner for reasons more fully set forth in its attached Memorandum in Support. There is no genuine issue of material fact in this matter. The Parish is entitled to judgment as a matter of law, dismissing Plaintiffs' claims and demands at Plaintiffs' costs.

3.

In support of its Motion for Summary Judgment, The Parish submits the attached Memorandum, its Statement of Uncontested Facts, and the following exhibits:

Exhibit A: Second Amended Petition for Declaratory and Injunctive Relief

Exhibit B: Affidavit of Brooke Robichaux

Exhibit C: Excerpts of St. John the Baptist Parish Code of Ordinances

Exhibit D: Reasons for Judgment in *Save Our Wetlands, Inc. v. St. John the Baptist Parish, et al*; Suit No. 26,371; Fortieth Judicial District Court; St. John the Baptist Parish, Louisiana; *affirmed*, 600 So.2d 790 (La. App. 5th Cir. 1992)

Exhibit E: St. John the Baptist Parish Home Rule Charter

Exhibit F: Affidavit of Mark Howard

3.

In accordance with La. Dist. Ct. R. 9.8(a), The Parish shows that this matter is not set for trial. The Parish does not intend to offer live testimony at the hearing of this motion.

4.

The Parish prays that a contradictory hearing on its above motion for summary judgment be set in accordance with Louisiana Code of Civil Procedure article 966(C)(1)(a). As required by article 966(C)(1)(a), The Parish is submitting this motion and all supporting materials at least thirty days before the hearing date on the Defendant's Motions for Summary Judgment which has been set for March 16, 2023.

WHEREFORE, the Parish prays that its Motion for Summary Judgment be granted and that the Court dismiss, with prejudice, all causes of action asserted by Plaintiffs: the Descendants Project, Jocyntia Banner, and Joyceia Banner, at Plaintiffs' cost; and for all legal and equitable relief to which the Parish is entitled and which this Court may deem necessary and proper.

Respectfully submitted:

ACCARDO LAW FIRM, LLC

Attorneys for Defendant, SJPB

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By:


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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,
Et als.

FILED: _____

DEPUTY CLERK

RULE TO SHOW CAUSE

Considering the above and foregoing:

IT IS HEREBY ORDERED that The Descendants Project, Jocyntia Banner, and Joyceia Banner ("Plaintiffs"), appear and show cause, if any they can, on the 16th day of March, 2023, at 10:00 a.m. in Edgard, Louisiana, why the above and foregoing motion for summary judgment filed by should not be granted.

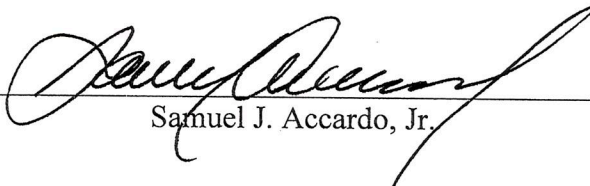
Thus Done and Signed this _____ day of _____, 2023 in

_____, Louisiana.

Hon. J. Sterling Snowdy, District Judge

CERTIFICATE OF SERVICE

Given the above matter and a parallel motion for summary judgment by co-defendant has already been set for hearing by this Honorable Court and notice of said date and time of hearing has been chosen by the parties previous hereto, undersigned counsel hereby affirms that service of the above and forgoing Motion for Summary Judgment in the same matter and issue has been provided to all counsel of record in accordance with *La. C.C.P. Article 1313* this 13th day of February, 2023.



Samuel J. Accardo, Jr.

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, ET ALS.

FILED: _____

DEPUTY CLERK

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendant: ST. JOHN THE BAPTIST PARISH (the Parish) submits this memorandum in support of its motion for summary judgment filed herein and attached hereto. Defendant, the Parish, respectfully shows that the Plaintiffs have not, and cannot, produce factual support sufficient to show that they can satisfy their evidentiary burden of proof at trial on their claim that Parish Ordinance 90-27 is absolutely null.

BACKGROUND

This Court is well acquainted with the facts and circumstances in this case. Evidence and testimony has been made part of the record herein. On April 19, 1990, St. John The Baptist Parish Council adopted Ordinance 90-27. The vote of the Parish Council was unanimous: Eight (8) yeas to Zero (0) nays with one recusal. Ordinance 90-27 was published in in the official journal of St. John the Baptist Parish on April 26, 1990 and became effective five days thereafter.

Ordinance 90-27 provided for the rezoning of certain tracts of land, including the land now owned by Greenfield and which is subject to this litigation.¹ The subject property (land) is zoned to I-3. The subject I-3 zoning is classified as an industrial zoning district permitting

¹ See Plaintiffs' Opp. to Def.'s Application for Supervisory Writ at pp. 3-4 (June 24, 2022) ("Greenfield purchased [property] . . . within the boundaries of land purportedly rezoned by the ordinance.").

various industrial uses including grain elevators.² In its reasons for judgment in other litigation, this Court has previously determined that Ordinance 90-27 is valid:

A zoning re-classification is a land use determination and is a legislative function which was performed in this case by the Parish Council after much debate, public hearing, fact-finding missions and consideration before the adoption of Ordinance Number 90-27. This ordinance is accorded a presumption of validity and the extraordinary burden of proving the action was arbitrary and capricious has not been met by plaintiff.³

STATEMENT OF UNCONTESTED FACTS

1. On April 19, 1990, Ordinance 90-27 was enacted by the St. John the Baptist Parish Council by a vote of eight yeas in support of enacting the ordinance and zero nays with one councilman recused as reflected in the public record of this parish.
2. Published Ordinance 90-27 provides for the rezoning of certain tracts of land to I-3, an industrial zoning district permitting various industrial uses including grain elevators.⁴
3. Section 113-410(1)(b) of the St. John the Baptist Parish Land Development Regulations currently provides the following locational criteria, "Sites to be designated Industrial District Three (I-3) shall be so located a minimum 2,000 feet away from a concentration of one dwelling unit per acre (du/ac) gross area."⁵
4. The locational criteria in effect at the time of the proposed ordinance was virtually identical and provided as follows: "An I 3 district or use area shall be located a
5. St. John the Baptist Parish is a home rule charter government.
6. The Parish's procedures for enacting an ordinance are found in Art. IV, Sec. B of its Home Rule Charter, which is entitled "Enactment of an ordinance."
7. An ordinance is "enacted" at a public meeting, when voted upon favorably by at least a majority of the members of the parish council.
8. The then Parish President, Lester Millet, Jr., signed and approved Ordinance 90-27.

² Public Record St. John the Baptist Parish Code of Ordinances Sec. 113-405.

³ *Save Our Wetlands, Inc. v. St. John the Baptist Parish, et al.* ("Save Our Wetlands"); Suit # 26,371; 40th Judicial District Court, St. John the Baptist Parish, *aff'd* 600 So.2d 79, Page 146 (La. App. 5th Cir. 1992).

⁴ St. John The Baptist Parish Published Code of Ordinances 113-405.

⁵ St. John The Baptist Parish Published Code of Ordinances Sec. 113-410.

**ELEMENTS NECESSARY TO DECLARE AN ORDINANCE
NULL AND VOID AB INITIO**

The burden of proving the invalidity of a rezoning ordinance is “extraordinary”. The petitioner must establish that a real or substantial relationship to the general welfare is lacking. *Palermo Land Co., Inc. v Planning Comm of Calcasieu Parish*, 561 So.2d 482, 490 (La. 1990). If it appears that appropriate concerns for the public could have been the motivation for a zoning ordinance, it will be upheld. *Palermo*, 561 So.2d at 492. It is well-established that a presumption of validity attaches to zoning ordinances. Debatable cases will be resolved in favor of the validity of the challenged zoning enactment. *Id.* at 493; *see also Save Our Neighborhoods v. St. John the Baptist Parish*, 908 So.2d 908, 910 (La. App. 5th Cir. 1991).

An ordinance enacted by a political body must be illegal, such that it violates a parish’s Home Rule Charter, a Louisiana statute, or the federal or state constitution in order to be declared null and void *ab initio*. *Vieux Carre Property Owners Association, Inc. v. City of New Orleans*, 167 So. 2d 367 (1964) (ordinance may not contravene Louisiana Constitution); *Kennedy v. Town of Georgetown*, 99-468, p. 3 (La. App. 3 Cir. 10/13/99); 746 So.2d 663, 664 (ordinance void *ab initio* for failure to follow statutory procedure); *McMahon v. City of New Orleans*, 2018-0842, p.5 (La. App. 4 Cir. 9/4/19); 280 So. 3d 796, 800; *writ denied*, 2019-01562 (La. 11/25/19) (ordinance violative of home rule charter void *ab initio*); *see also Miller v. Oubre*, 96-2022, p. 10 (La. 10/15/96); 682 So.2d 231, 236 (“Powers of a home rule government can be limited by its own home rule charter, the state constitution, or general state laws.”).

The discretion of the government body will not be interfered with by the courts as zoning laws are presumed to be enacted for valid purposes, unless it is clearly shown that the ordinance is arbitrary, unreasonable and in violation of the enabling statute. *Sears, Roebuck & Co. v. City of Alexandria*, 155 So.2d 776, 780 (La. Ct. App.1963), *writ denied*, 245 La. 83; 157 So.2d 230 (1963); *see also Chapman v. City of Shreveport*, 225 La. 859, 869; 74 So.2d 142, 145 (1954). The party challenging the zoning ordinance is charged with the burden to overcome this presumption of validity. *Id.* The court will uphold the ordinance unless it is clearly shown to be incompatible with the enabling legislative act or the constitution. *Id.* Doubtful cases are decided in favor of the validity of the zoning law. *Id.*

Because zoning falls under the jurisdiction of the legislature, courts will not interfere with their prerogative unless their action is palpably erroneous and without any substantial relation to the public health, safety or general welfare. *King v. Caddo Parish Commission*, 97-1873, pp. 14-

15 (La.10/20/98), 719 So.2d 410, 418. Zoning is a legislative function. The authority to enact zoning regulations flows from the police power of the various governmental bodies. *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659 (La.1975); *Folsom Road Civic Association v. Parish of St. Tammany*, 407 So.2d 1219 (La.1981). Moreover, “Zoning is not static. In recognition of this fact, Louisiana statutes specifically provide that the original regulations may be ‘amended, changed, modified or repealed.’” *Four States Realty*, 309 So.2d at 665.

LAW AND ARGUMENT

A. Summary Judgment Standard

On a motion for summary judgment, the burden of proof remains with the movant. However, if the moving party will not bear the burden of proof on the issue at trial and points out there is an absence of factual support for one or more elements essential to the adverse party’s claim, then the non-moving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. La. C.C.P. art. 966(D)(1); *Goins v. WalMart Stores, Inc.*, 2001-1136 (La. 11/28/01), 800 So.2d 783, 788. The failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. La. C.C.P. art. 966(D)(1); *Bufkin v. Felipe’s Louisiana, LLC*, 2014-0288 (La. 10/15/14), 171 So.3d 851, 854. The non-moving party may not depend solely on denials or assertions contained in the pleadings but must submit specific facts showing that there is a genuine issue for trial. *See Scott v. McDaniel*, 96-1509 (La. App. 1 Cir. 5/9/97), 694 So.2d 1189, writ denied, 97-1551 (La. 9/26/97), 701 So.2d 991.

After an opportunity for adequate discovery, summary judgment shall be granted if the motion, memorandum, the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3); *Beer Indus. League of Louisiana v. City of New Orleans*, 2018-0280 (La. 6/27/18), 251 So.3d 380, 386. The summary judgment procedure is favored and designed to secure the just, speedy, and inexpensive determination of civil actions. La. C.C.P. art. 966(A)(2); *Kennedy v. Sheriff of East Baton Rouge*, 2005-1418 (La. 7/10/06), 935 So.2d 669, 686.

In order for Plaintiffs to prevail in their claim that Ordinance 90-27 is absolutely null, they must prove that the ordinance is illegal, such that it violates the Parish’s Home Rule

Charter, a Louisiana statute, or the federal or state constitution, or that the enactment of Ordinance 90-27 did not follow statutory procedure.

B. There Is No Factual Support to Establish that Ordinance 90-27 Is Absolutely Null.

In Paragraphs 204-211 of their Second Amended Petition (hereinafter "Petition"), Plaintiffs articulate their claims which purport to support the invalidity of Ordinance 90-27:

- The illegality and corruption of the Parish President surrounding the adoption of Ordinance 90-27 nullifies the ordinance.
- The ordinance was never authenticated as required by Art. VI, Sec. F(1) of the Parish's Home Rule Charter.
- The survey map relied upon by the document delineating the properties to be rezoned and attached to Ordinance 90-27 was "mysteriously" torn from an act recorded in the land records of the Clerk of Court.
- The Parish's *current* zoning maps conflict with each other as to the exact status of zoning of the Wallace tract and none of them comply with the Parish Code's requirements for official maps.
- In Paragraphs 31-34 of the Petition, Plaintiffs also allege that the ordinance did not comply with the Parish's land development regulations.

As set forth more fully hereafter, Plaintiffs cannot meet their burden of establishing that Ordinance 90-27 is absolutely null. This Court has already recognized that Plaintiffs allege numerous facts which, even if accepted as true, have no bearing on the validity *vel non* of Ordinance 90-27.⁶ Specifically, the Court found Plaintiffs' assertions that "residents of Wallace, neighboring historic and cultural sites, and Lac des Alleman allegedly face 'potential threat' from a new heavy industrial facility seeking to locate on the Wallace tract is of no moment to the validity of an ordinance created through the legislative process." Further, the Court found that Plaintiffs' assertions that "the Parish Planning and Zoning Commission has allegedly presented conflicting zoning maps does not invalidate Ordinance 90-27." The Court did find Plaintiffs had stated a cause of action by alleging that Ordinance 90-27 violated the Parish's own Land Development Regulations and that the Parish Council secretary failed to authenticate the ordinance, but as set forth more fully hereafter, those allegations are in fact not true, and even if they were, they do not provide any legal basis for invalidating Ordinance 90-27.

As demonstrated below:

- (1) The illegality and corruption of the former Parish President does not invalidate Ordinance 90-27 and Plaintiffs have failed to identify or produce any evidence that his illegal activity actually played any role in the passage of the Ordinance;
- (2) Authentication has no bearing on the validity of the Ordinance;
- (3) A currently missing survey map purportedly attached to a private conveyance instrument in the land records does not invalidate an ordinance passed thirty years

⁶ May 10, 2022, Written Reasons for Judgment, pp. 5-6.

ago and Plaintiffs have failed to identify or produce any evidence that the survey map is, in fact “missing”;

- (4) Conflicting zoning maps in the current parish office cannot invalidate Ordinance 90-27;
- (5) Ordinance 90-27 complies with the Parish’s Land Development Regulations; and
- (6) Plaintiffs’ remaining allegations, even if accepted as true, have no bearing on the validity vel non of Ordinance 90-27.

1. The Illegality and Corruption of the Parish President Does Not Invalidate the Ordinance.

Even if the various allegations regarding the alleged criminal conduct of the Parish President are assumed to be true, the actions of the Parish President do not *per se* result in the invalidity of an ordinance adopted by the Parish Council as the legislative governing body with authority to enact ordinances. Specifically, Plaintiffs’ allegation that the Parish President abused his authority “to push through the needed rezoning,” is a quote taken out of context and leaves out key words in the Fifth Circuit Court of Appeals’ opinion, which states that Millet “*promised* Formosa...he would use his authority to push through the needed rezoning” (emphasis added). The crime for which Millet was convicted was the *attempt* to peddle his influence, but the proceeding never determined whether any member of the Parish Council was in fact influenced. The Parish President could not have “pushed through the zoning” by himself because he did not have a vote as a member of the Council holding the authority to enact an ordinance. The Parish President at most *promised* to do something that he lacked authority to achieve.

Plaintiffs have not even alleged that any member of the Parish Council was actually influenced by the actions of the former Parish President, and Plaintiffs do not identify any evidence (and the Parish believes none exists) that any Council member’s decision to support the Ordinance was in fact influenced by the illegal actions of the Parish President. Even if they had, at this stage of the proceedings, mere allegations are insufficient for Plaintiffs to survive summary judgment. “An adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or other appropriate summary judgment evidence, must set forth specific facts showing that there is a genuine issue for trial.” La. Code Civ. Pr. art 967; *Sonnier v. Gordon*, 50,513 (La. App. 2 Cir. 4/13/16) 194 So.3d 47, 52. Plaintiffs have failed to do so for the simple reason that no such evidence exists.

2. The Ordinance's Authentication, or Even the Lack thereof, Does Not Affect Its Validity.

A lack of authentication does not affect the validity of Ordinance 90-27. While Louisiana courts have found that failure to comply with "statutory procedures regulating *enactment* of zoning laws" will invalidate a zoning ordinance, the authentication of an ordinance is not part of the Parish's ordinance enactment procedures. See *Schmitt v. City of New Orleans*, 461 So. 2d 574, 577 (La. App. 4 Cir. 1984) (citing *De Latour v. Morrison*, 34 So. 2d 783 (La. 1948) (emphasis added); *State ex rel. Holcombe v. City of Lake Charles*, 144 So. 502 (1932); *Kirk v. Town of Westlake*, 421 So. 2d 473 (La. App. 3 Cir. 1982)).

The Parish's procedures for enacting an ordinance are found in Art. IV, Sec. B of the Parish's Home Rule Charter, which is entitled "Enactment of an ordinance." Section (B)(1) provides that "Except as provided in Section E hereof,⁷ an ordinance shall be enacted only in the manner provided in this Section." These procedures include procedures for introducing the ordinance, publication in the official parish journal, public hearings, and adoption of an ordinance, but say nothing about the authentication of the ordinance. Art. IV, Sec. B(3)(h) specifically states that after these procedures are followed, "An ordinance shall be *enacted* at a public meeting, when voted upon favorably by at least a majority of the members of the parish council." Thus, Ordinance 90-27 was "enacted" on April 19, 1990 when the Parish Council entered a vote of eight yeas in support and zero nays with one councilman recused at the public meeting.

Authentication of an ordinance is not provided for in the Parish's procedures for enacting an ordinance, but rather in Art. IV, Sec. F of the Home Rule Charter, which addresses authentication, recording, printing, and distributing of ordinances. It is clear from these provisions that authentication has nothing to do with the validity of the ordinance but is simply part of the process by which ordinances are maintained and made available to the public. Sec. F of the Home Rule Charter provides as follows:

1. The council secretary shall authenticate by his signature and record, in a properly indexed book or books kept for the purpose, all approved ordinances and resolutions. Each such approved ordinance and resolution shall be given a number for reference and identification.
2. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed or otherwise reproduced promptly following its approval and such printed or reproduced resolutions, amendments and ordinance, including codes of technical regulations adopted by reference pursuant to section D shall be distributed or sold to the public at reasonable prices.

⁷ Section E addresses emergency ordinances.

The authentication of an ordinance takes place *after* the ordinance is enacted and approved.⁸ Thus, even if Ordinance 90-27 was not authenticated, a proposition the Parish disputes, the absence of authentication was not a failure to comply with the Parish's procedures for enacting an ordinance. Louisiana courts have invalidated ordinances only when the enacting body fails to follow enactment procedures, which typically involve non-compliance with procedures for publishing the proposed ordinance or conducting a public hearing - the same kind of procedures the Parish classifies as enactment procedures under its Home Rule Charter. See *Schmitt v. City of New Orleans*, 461 So. 2d at 577 (failure to comply with procedures for publication); *State ex rel. Holcombe*, 144 So. at 503-04 (same); *De Latour v. Morrison*, 34 So. 2d at 784-85 (failure to comply with notice and hearing procedures); *Kirk v. Town of Westlake*, 421 So. 2d at 475 (same).

The Louisiana Supreme Court has held that when an ordinance is enacted in substantial compliance with legislative direction, the ordinance is not null. In *Shautin v. Bd. of Comm'rs of St. Landry & St. Martin Gravity Drainage Dist. No. 1*, 107 So. 897, 900 (La. 1926), the Court found that where two parishes adopted valid ordinances to create a drainage district, irregularities resulting from noncompliance with directory provisions of the law could not nullify the ordinance. No case holds that failure to authenticate a properly enacted ordinance invalidates the zoning ordinance.

3. A Later Missing Survey Map Does Not Invalidate the Ordinance.

Paragraph 209 of the Petition alleges not that a map attached to the ordinance is missing, but rather that a survey attached to an instrument in the Clerk of Court's land records upon which the legal description attached to the ordinance was based, is missing. Of course, Plaintiffs do not allege when the map went missing, and have no evidence of when or how that occurred. Even if assumed to be true, Plaintiffs' allegations that a survey referenced in the property description attached to Ordinance 90-27 is now missing from the Clerk of Court's land records (i.e., the conveyance records) is of no moment to the validity of the ordinance at the time it was passed, or now. An ordinance adopted by the Council is the law and is controlling regardless of a later missing document referenced by the ordinance. Further, Plaintiffs' allegation that a map currently missing from the Clerk of Court's book of Instruments is crucial to the Ordinance is unsupported by fact or evidence. No evidence establishes that the missing page from the

⁸ The then Parish President, Lester Millet, Jr., signed and approved Ordinance 90-27.

instrument book contained a map referenced by Ordinance 90-27. Further, the property description attached to the ordinance itself is more than sufficient to identify the property subject to the ordinance. Last, holding an ordinance invalidated because a reference document is subsequently lost or destroyed would make for unreliable laws, as any ordinance could be subject to future invalidation due to potential bad acts or acts of God that destroy referenced documentation.

4. Conflicting Current Zoning Maps Are a Red Herring.

Ordinance 90-27 is consistent with the Parish's official zoning map, and the validity of the ordinance is not affected simply because there are inconsistencies with current maps of the same property that are not the Parish's official zoning map. This Court has already held that conflicting zoning maps cannot serve to invalidate Ordinance 90-27, because "[c]onfusion of this nature within government cannot act to invalidate laws that were presumably validly created through the legislative process."⁹ Indeed, the ordinance adopted by the Parish Council controls the zoning designation, and any error in translating that ordinance to the current zoning map is not an invalidation of the ordinance and may be corrected as a ministerial government duty. *See 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 (mandamus was appropriate remedy to correct parish zoning map error and undertaking parish's rezoning process was inappropriate to correct the error). Of course, Plaintiffs have made no allegation and have identified no evidence as to when the current zoning maps became inconsistent with the zoning provided by Ordinance No. 90-27.

In a similar vein, even if assumed to be true, Plaintiffs' allegations regarding inconsistent zoning references in maps attached to private acts of sale and in maps submitted in connection with subdivision approvals are of no moment to the validity of a public ordinance enacted by the Parish. Each of these allegations are of no consequence because the ordinance adopted by the Council is the law and is controlling over any private act of sale or subdivision approval.

5. Ordinance 90-27 Is Not in Violation of the Parish's Land Development Regulations.

The 300-foot buffer provision in Ordinance 90-27 is not in violation of Parish Land Development Regulations and thus does not invalidate the ordinance. The Land Development Regulations provide locational criteria that the Planning Commission and the Parish Council

⁹ May 10, 2022, Written Reasons for Judgment, p. 6.

apply when reaching a decision to rezone land to an I-3 zone. Section 113-410(1)(b) provides as follows with respect to the location of an I-3 site:

Sites to be designated Industrial District Three (I-3) shall be so located a minimum 2,000 feet away from a concentration of one dwelling unit per acre (du/ac) gross area.¹⁰

On the other hand, Ordinance 90-27 provides for a buffer zone *within the particular I-3 zone* created by the ordinance where that I-3 zone abuts an R-1 Zone. The ordinance reads as follows:

where ever [sic] an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet *within the I-3 zone* separating the I-3 from R-1.

These are two separate requirements that are not inconsistent. Land Development Regulation Section 113-410(1)(b) does not require any minimum distance between an I-3 zone and an R-1 zone whatsoever, but provides a dwelling unit per acre (du/ac) gross area test. Having already applied the locational criteria test necessary to rezone the land I-3, Ordinance 90-27 adds the additional protection of an I-1 buffer¹¹ between an R-1 zone and the I-3 zone. Thus, Ordinance 90-27 is not inconsistent with or a violation of the express provisions of Section 113-410(1)(b).

Indeed, this is precisely how the law was applied in connection with the adoption of Ordinance 90-27. The Parish Zoning Administrator determined that the dwellings in the gross area were less than the allowable number set forth in the Land Development Regulations and that the locational criteria from the Code of Ordinances was satisfied, and so informed the Commission by letter dated March 26, 1990, prior to the passage of the Ordinance.¹² In fact, *this very Court* examined another plaintiff's claims relating to the exact same ordinance, and expressly determined that the 2,000 foot locational criteria that is part of the Land Development Regulations was satisfied in connection with the adoption of Ordinance 90-27:

That these formalities were met was duly shown by the testimony of Mark Howard, who functioned then as the zoning administrator . . . Howard's report . . . includes his findings that the locational criteria set out in the comprehensive zoning ordinance were met.¹³

¹⁰ In their Second Amended Petition, Plaintiffs refer to the current version of the Code of Ordinances, rather than the version in effect in 1990. There is no substantive difference, however, between the two codes with respect to the locational criteria at issue. Howard Affidavit.

¹¹ The I-1 buffer allows for the location and grouping of uses to a type designed for light manufacturing, processing, storage and warehousing, wholesaling and distribution. Public record St. John The Baptist Parish Code of Ordinances, Sec. 113-364.

¹² Howard Affidavit.

¹³ Reasons for Judgment, p. 145, *Save Our Wetlands*.

Mr. Howard's methodology in determining the application of the 2,000 foot locational standard was approved again by the trial court, and then by the Fifth Circuit in *Save Our Neighborhoods v St. John the Baptist Parish*, 592 So.2d 908 (La. App. 5th Cir. 1991). Louisiana courts have consistently deferred to zoning boards' interpretation of their own regulations.¹⁴

Further, even if Ordinance 90-27 were to be deemed inconsistent with Section 112-410(1)(b) of the Parish Land Development Regulations, it would not be grounds for nullification. While the Parish Council cannot violate its own Home Rule Charter, it can amend, repeal, modify or make exceptions to ordinances that it has authority to adopt. "As the local governing body with final zoning authority, the Police Jury of Calcasieu Parish has the authority to amend, supplement, change, modify or repeal existing zoning ordinances." *Palermo*, 561 So.2d at 491. "Whether Calcasieu Parish began to develop prior to adoption of a comprehensive zoning plan, or simply found a change in the original zoning plan was necessary, ***it had the authority to change existing zoning classifications*** to aid the development of the community and steer its development in a direction commensurate with the needs and desires of its residents." *Id.* at 494 (emphasis added).

The Home Rule Charter provides that the Parish Council shall be vested with and shall exercise all legislative power in the Parish. It additionally provides that the Parish Council may, by ordinance, "adopt[] or modif[y] the official map, plot, subdivision ordinance, regulations or zoning plan" and "amend[] or repeal[] any ordinance previously adopted." Accordingly, the Parish Council had the authority pursuant to its Home Rule Charter to adopt zoning ordinance provisions providing for a 2000-foot distance between industrial property and a certain concentration of residences. Similarly, it had authority to amend, repeal, or modify and adopt a supplement to that rule by providing for a 300 foot I-1 buffer in an I-3 zone abutting an R-1 zone.¹⁵ While the addition of the 300 foot buffer in Ordinance 90-27 does not conflict with the

¹⁴ See *Cordes v Board of Zoning Adjustments*, 2009-0976 (La. App. 4 Cir. 1/20/10), 31 So.3d 504, 508: "Finally, a reviewing court should not merely substitute its own judgment for that of the BZA unless there is a showing that the Board acted arbitrarily and capriciously, the Board abused its discretion, or the Board rendered a decision that was manifestly erroneous in light of substantial evidence in the record." Citing *King v. Caddo Parish Commission*, 97-1873 (La.1998), 719 So.2d 410; *Freeman v Kenner Board of Zoning Adjustments*, 09-1060 (La. App. 5 Cir. 4/27/10) 40 So.3d 207, 212: "A reviewing court cannot substitute its own judgment or interfere absent a showing by the appellant that the board was arbitrary and capricious or abused its discretion."

¹⁵ *McMahon v. City of New Orleans*, 2018-0842, p.5 (La. App. 4 Cir. 9/4/19); 280 So. 3d 796, 800; writ denied, 2019-01562 (La. 11/25/19), is distinguishable in that it held that an ordinance that violated a parish's Home Rule Charter was null and void *ab initio*. However, here the Plaintiffs do not allege that Ordinance 90-27 violates the St. John the Baptist Home Rule Charter but rather its Land Development Regulations, which are zoning ordinances adopted by the Council that can be amended, repealed, or modified by ordinance.

Land Development Regulations, even if the Court were to conclude to the contrary, the Parish Council had the authority to adopt an ordinance that modified the existing regulations. Accordingly, the 300-foot buffer provided for in Ordinance 90-27 is not a legitimate basis for nullifying Ordinance 90-27.

Plaintiffs have not put forth evidence carrying their burden that the Ordinance is incompatible with the Home Rule Charter, state statutes or the Constitution. Doubtful cases must be resolved in favor of upholding the zoning law. *Sears, Roebuck & Co.*, 155 So.2d at 780.

6. Plaintiffs' remaining allegations, even if accepted as true have no bearing on the validity *vel non* of Ordinance 90-27.

All of Plaintiffs' remaining allegations, even if assumed to be true, have no bearing on the validity *vel non* of Ordinance 90-27, because Plaintiffs have failed to demonstrate that the ordinance established through the legislative process was a zoning designation in violation of its own Home Rule Charter, Louisiana statute, or federal or state constitution or laws, or that the legislative body of St. John the Baptist Parish acted arbitrary or capricious in adopting the ordinance.

Even if assumed to be true, Plaintiffs' allegations relating to opposition and support for the passage of Ordinance 90-27 set forth in Paragraphs 35-42 and 54-76 of the Petition are not grounds for invalidating the ordinance. Prior opposition or support at public hearings have no bearing on the legitimacy of an ordinance adopted by the Parish Council by exercising its legislative discretion after hearing testimony and deciding what to accept or reject. The Parish Council's decision to agree with proponents and disagree with opponents was within its legislative authority.

Plaintiffs' allegations in Paragraphs 43-44 relating to the signing of Ordinance 90-27 by the Parish President are not grounds for nullification of the ordinance. While the Parish President has the authority to approve or veto an ordinance, an ordinance adopted by the Parish Council becomes effective regardless of whether the Parish President approves it or does not specifically disapprove it. The veto authority of the Parish President is moot in this case.

Even if the allegations relating to the current use of the land set forth in Paragraph 77 are assumed to be true, the use of the land for agricultural purposes or otherwise has no bearing on the zoning of the property, because it is the zoning that determines the permitted use and not the use that dictates the zoning. "The fact that the owner cannot or may not comply with some of those [zoning] requirements does not render the change in the classification of Lot 12 invalid."

Hardy v Mayor and Bd. Of Aldermen, City of Eunice, 348 So.2d 143 (La. App. 3rd Cir. 1977).

Plaintiffs' various allegations in Paragraphs 141-200 relating to the potential effects of a new industrial facility on the residents of Wallace, neighboring historic and cultural sites, and Lac des Alleman are not grounds for a Court to invalidate a zoning ordinance, because these potential effects do not show that the zoning ordinance violates any Home Rule Charter provision, state statute or the federal or state constitution.

CONCLUSION

There is simply no evidence, nor evidence supported by Louisiana law in this matter, that Ordinance 90-27 is absolutely null. Accordingly, there is no material issue of genuine fact regarding the validity of Ordinance 90-27.

Plaintiffs' claims regarding the alleged acts of the former Parish President do not create a genuine issue of material fact. It is Plaintiffs' burden to come forward with some evidence that Millet was successful in his alleged efforts to influence the Council. Despite the fact that this case has been pending for nearly a year, they have not done so.

The attached affidavits, actions of the Parish governing body, and public record of Ordinance 90-27 demonstrate that Ordinance 90-27 was properly authenticated. Moreover, even if it were not, the absence of authentication does not affect the validity of the ordinance. Similarly, "missing" and "conflicting" maps do not defeat an ordinance which was presumed to be valid when it was passed, and Plaintiffs have produced no evidence that those maps and surveys were missing in 1990. Finally, as set forth in the affidavit of Mark Howard and more fully above, there is no conflict between the Land Development Regulations and the Ordinance. Again, even if there were, the Parish Council can always amend its own regulations. Accordingly, the Parish prays that its Motion For Summary Judgment be GRANTED, dismissing Plaintiffs' claims with prejudice, at Plaintiffs' cost; and for all other general and equitable relief to which the Parish may be entitled.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Memorandum in Support of Defendant's, St. John The Baptist Parish, Motion for Summary Judgment has been served on all counsel of record this 13th Day of February, 2023.



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