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

The Descendants Project, Jocyntia Banner, and Joyceia Banner,

Plaintiffs,

v.

St. John the Baptist Parish, through its Chief Executive Officer, *et al*

Defendants.

Civil Action: 77305

Division C

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

William P. Quigley
La. Bar Roll No. 7769
Professor Emeritus
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Pamela C. Spees
La. Bar Roll No. 29679
Center for Constitutional Rights
666 Broadway, 7th Floor New York,
NY 10012
Tel & Fax (212) 614-6431
pspees@ccrjustice.org

Attorneys for Petitioners

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SUMMARY

Plaintiffs commenced this action seeking a declaration that a Parish rezoning ordinance was unlawfully enacted in 1990 and was therefore null and void *ab initio*. Two facts subsequently revealed after discovery further confirm and clarify how a last-minute amendment to the ordinance was passed in violation of state and parish law: 1) a 300-foot light industrial (I-1) buffer zone was inserted into the ordinance via a last-minute amendment without review by the Planning Commission and without public notice and hearing; and 2) this last-minute amendment cut in half the 600-foot buffer between heavy industrial and residential zones imposed by an earlier ordinance.

The fact of this serious procedural violation was not before the court or addressed by it when the rezoning was first challenged in 1991. Rather, the attack on the ordinance centered on the merits of the substantive decision to rezone, not the process by which the decision was reached; these are distinct questions as procedural violations independently warrant invalidation. *See Save Our Wetlands, Inc. v. St. John The Baptist Par.,* 600 So. 2d 790, 791 (La. App. 5th Cir. 1992), *writ denied*, 604 So. 2d 1005 (La. 1992) ("primary thrust of appellant's argument is that the council was not fully informed before agreeing with the rezoning petition").

Specifically, when the St. John the Baptist Parish Council inserted a 300-foot light industrial zone into the rezoning map proposed in Ordinance 90-27 in the final moments before it voted to adopt the Ordinance, it violated state and parish law in three ways. First, the Council disregarded the requirement that all such zoning changes must originate from or be submitted to the Planning Commission for assessment, and a report and recommendation. Second, the Council circumvented the requirement that the Planning Commission hold a public hearing with notice and opportunity to be heard. Finally, after the Planning Commission process, the Council itself was required to provide notice and hearing to the public and affected residents before making such a material change to a zoning requirement, under the Home Rule Charter.

Defendants' motions make no mention of the heightened requirements for zoning.

Standing alone, the Council's failure to follow the required procedures for the buffer zone rendered the ordinance a nullity. But it is now also apparent – as revealed in Defendants' briefing – that the 300-foot I-1 buffer dramatically altered and reduced a pre-existing ordinance requiring a 600-foot I-1 buffer between heavy industrial I-3 zones and

residential zones parish-wide. Which is to say, it made Plaintiffs and other neighbors of the rezoned property substantially worse off than they would have been without the buffer amendment. Moreover, both ordinances were passed by the same Parish Council members and approved by the same Parish President, indicating they had actual knowledge of the pre-existing buffer requirement when they reduced it by half.

The Parish Council's failure to properly enact the reduced buffer zone renders Ordinance 90-27 null and void *ab initio*, and entitles Plaintiffs to summary judgment. *See*, e.g., *Schmitt v. City of New Orleans,* 461 So.2d 574, 578 (La. Ct. App.1984), *writ denied*, 464 So.2d 318 (La.1985), and *writ denied*, 464 So.2d 319 (La.1985) (holding two ordinances invalid for lack of referral to the planning commission). *See also, The Descendants Project v. St. John the Baptist Parish,* No. 22-C-264 at p. 4 (La. App. 5 Cir. 6/29/22) *citing Fauberg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 620 (Because "zoning laws are in derogation of the rights of private ownership," Louisiana courts "require strict compliance with the statutory procedures regulating enactment of zoning laws.").

More, the illegality resulting from procedural violations in the enactment of the rezoning ordinance is compounded (and perhaps even explained) by the corruption that gave rise to and was furthered by the Ordinance. The record reveals that the rezoning process was mired in corruption as the Parish President was later convicted of extortion, money laundering, and other corruption, which involved the "misuse of his official position as Parish President" and promises to "use his authority to push through the needed rezoning" in connection with the very zoning ordinance at issue here. *U.S. v. Millet,* 123 F.3d 268, 270 (5th Cir. 1997).

These facts were not known nor knowable when the trial court and the appellate court were called upon to assess whether the Parish Council's decision to adopt Ordinance 90-27, on the merits of the proposal, was an abuse of discretion. Rather, the courts engaged in the standard review of zoning ordinances, giving the local government the required high degree of deference for discretionary choices on how to regulate land, subject to adequate procedures justifying the deference. Even on the separate question not presented here regarding the substantive decision, it was a close call for the appellate court: "[W]e agree that the decision was probably debatable; however, the authority of the courts in such instances

must bow to the police power of the elected governing body." *Save Our Wetlands, Inc. v. St. John The Baptist Par.,* 600 So. 2d 790, 791 (La. App. 5th Cir. 1992), *writ denied,* 604 So. 2d 1005 (La. 1992).[1]

This level of deference to decision-making by a local governing body as to zoning assumes that the process is exercised honestly. When it is not, courts are not bound by that deference. *See Four States Realty Co., Inc. v. City of Baton Rouge,* 309 So. 2d 659, 666 (La. 1974) ("[W]hen there is room for two opinions, action is not arbitrary or capricious *when exercised honestly* and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.") (emphasis added).

Defendants suggest the official corruption the ordinance was borne of is not relevant to its validity, even as it likely could explain the procedural irregularities that infected the ordinance. That is a dangerous proposition and one this Court should firmly reject.

In any case, the ordinance was improperly and unlawfully enacted, and therefore void *ab initio,* before the corruption came to light, and Plaintiffs are entitled to summary judgment.

ADDITIONAL UNCONTESTED MATERIAL FACTS AND ESSENTIAL LEGAL ELEMENTS

Pursuant to Rule 9.10 of the Louisiana Supreme Court Rules for Civil Proceedings in District Courts, Plaintiffs offer the following lists of additional uncontested material facts and essential legal elements:

Additional Uncontested Material Facts

1) **Ordinance 90-27.** Shortly before 9:15 p.m. on April 19, 1990, the St. John the Baptist Parish Council passed Ordinance 90-27, which rezoned several tracts of land to heavy industrial (I-3) (the "Wallace tract") with 300-foot light industrial (I-1) buffers inserted "within the I-3 zone" separating it from adjacent residential districts.[2]
2) **300-foot I-1 Zones Unlawfully Added at the Last Minute.** The I-1 buffer districts were inserted at the last minute and just before the ultimate vote, shortly after 9 p.m. as an amendment to the zoning map proposed in the ordinance, and the ordinance was

[1] The ultimately substantive conclusion accepted by the Court (albeit vigorously contested at the time) was that this area was suitable for industrial development. *Save Our Wetlands, Inc. v. St. John The Baptist Par.,* 600 So. 2d 790, 791 (La. App. 5th Cir. 1992), *writ denied,* 604 So. 2d 1005 (La. 1992).

[2] Ordinance 90-27 as produced in response to a public records request, annexed hereto as Exhibit P-1, and Official Proceedings of the St. John the Baptist Parish Council, April 19, 1990, annexed hereto as Exhibit P-2. (All exhibits are attached to the affidavit of Pamela Spees and will be referenced herein by their Exhibit number.)

approved immediately afterward, without prior public notice of and hearing on the amendment, violating both state and parish law governing the enactment of changes to zoning maps and districts.[3]

3) **The 300-ft. I-1 Zones Unlawfully Changed Existing Buffer Requirements.** The 300-foot I-1 zones unlawfully and dramatically shrunk by half a pre-existing ordinance requiring a **600-foot I-1** buffer between I-3 and residential districts.[4]

4) **Pre-Existing 600-foot Buffer Enacted by Same Council Members and Parish President**: The 600-foot buffer between heavy industrial and residential areas had been enacted less than two years before and by the same members of the Parish Council and Parish President. As part of Ordinance 88-68, it was passed on July 28, 1988, and approved on August 1, 1988, to amend the official parish zoning map.[5]

5) **No Recordation of Delivery to and Receipt from Parish President**. The council secretary failed to "record upon the ordinance… the date of its delivery to and receipt from the parish president," as required by Art IV, Sec. C(2) of the Home Rule Charter.

6) **No Authentication**. Ordinance 90-27 was not authenticated by the council secretary as required by Art. IV, Sec. F of the Home Rule Charter until 32 years later during the pendency of these proceedings.

7) **Corruption Conviction.** The Parish President at the time the ordinance was passed was later convicted of extortion, money laundering, and violation of the Travel Act "resulting from the misuse of his official position as Parish President" which included his promise to the company seeking to locate on the Wallace tract that he would "use his authority to push through the needed rezoning."[6]

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[3] Exhibit P-2 at 2.

[4] St. John the Baptist Parish Ordinance 88-68, annexed as Exhibit P-3. *Note*: While the signed copy produced by the Parish's custodian of records is very faint and difficult to read, the custodian produced a second copy of the text that accompanied the ordinance that is more legible. *See also, Save Our Neighborhoods v. St. John the Baptist Par.,* 592 So. 2d 908 at 912-13 (La. App. 5th Cir. 1991), *writ denied,* 594 So. 2d 892 (La. 1992) (discussing application of Ordinance 88-68) cited in Defendant Greenfield's Memorandum in Support of Motion for Summary Judgment at p. 13, and annexed hereto as Exhibit P-6.

[5] *See* Exhibit P-3 reflecting votes in favor by Council members Terry, Wolfe, Lewis, Duhe, Perrilloux, McTopy, Lee, Haydel, and Wilson, and approval by then-President Lester Millet Jr. Compare to Exhibit P-1, showing that the same Council members voted to adopt Ordinance 90-27, with the exception of McTopy who abstained.

[6] Judgment and Probation/Commitment Order, *United States v. Millet*, 2:95-cr-00187, United States District Court, Eastern District of Louisiana, annexed hereto as Exhibit P-5(a); *United States v. Millet,* 123 F.3d 268 (5th Cir. 1997), annexed hereto as Exhibit P-5(b).

List of Essential Legal Elements

1. **Strict Compliance.** Because "zoning laws are in derogation of the rights of private ownership," Louisiana courts "require strict compliance with the statutory procedures regulating enactment of zoning laws." *The Descendants Project v. St. John the Baptist Parish,* No. 22-C-264 (La. App. 5 Cir. 6/29/22) *citing Fauberg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 620.
2. **Zoning authority must be 'exercised honestly.'** One overarching and obvious requirement is that zoning actions must be "exercised honestly." "[W]hen there is room for two opinions, action is not arbitrary or capricious *when exercised honestly* and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." *Four States Realty Co., Inc. v. City of Baton Rouge,* 309 So. 2d 659, 666 (La. 1974) (emphasis added).
3. **Heightened Requirements for Zoning Changes**. Given the heightened protected interests at stake, both state and parish law treat zoning regulations and changes thereto differently from ordinances regarding other matters. Both state and parish law place additional procedural due process requirements on local planning and zoning commissions and legislative bodies. In their motions for summary judgment, Defendants only set out the Parish's rules for enactment of ordinary ordinances. The additional procedural requirements under state and parish law are set out below:

   A. State Law Has Heightened Requirements for Enactment of Zoning Ordinances.

      1. Notice and hearing required before Parish Council can consider and pass any changes or amendments to zoning.

   With regard to local government zoning, La. R.S. 33:4724(b)[7] provides that "[n]o regulations or restrictions shall become effective until after a public hearing at which parties in interest have an opportunity to be heard" and further that, "notice of the time and place of the hearing shall be published at least three times in the official journal…" The requirements of notice and public hearing "*shall apply to all changes or amendments.*" La. R.S. 33:4725.[8] (emphasis added)

[7] This requirement was in effect in 1990, though a portion of the larger provision was amended in 1991 to address population-specific procedures.
[8] This provision was in effect at the time.

2. In addition, before the Parish Council can consider and pass a rezoning ordinance, it must also receive a recommendation from Planning Commission after the Commission has conducted a public hearing with notice.

La. R.S. 33:4726(A) prohibits a local legislative body from "hold[ing] public hearings or tak[ing] action" on "any *supplements, changes, or modifications*" to "boundaries of the various original districts as well as the restrictions and regulations to be enforced therein" until it has "received a final report of the zoning commission." (emphasis added).

Pursuant to this same provision, before the planning commission can recommend such changes to the Parish Council, it must also hold a public hearing, with notice of the time and place of the hearing published at least three times in an official journal with at least ten days elapsing before the first publication and the date of the hearing.[9] *Id.*

B. Parish Law Also Provides Heightened Requirements for Zoning Ordinances.

1. Zoning Changes Must Be Enacted by Ordinance.

Art. IV, Sec. A(4) of the Home Rule Charter of St. John the Baptist Parish (the Charter) requires that any act that "[a]dopts or modifies the official map, plot, subdivision ordinance, regulations, or zoning plan" be enacted by ordinance. Art. IV, Sec. B sets out the requirements for enactment of ordinance, including notice via publication in the official journal and a public hearing.[10]

2. Recordation of Delivery to and Receipt from the President.

Art. IV, Sec. C(2) of the Charter requires the "council secretary shall record upon the ordinance or resolution the date of its delivery to and receipt from the parish president."

3. Authentication.

Art. IV, Sec. F of the Charter requires 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."

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[9] La. R.S. 33:4726(A), which was in effect at the time Ordinance 90-27 was passed, states in full:

> In order to avail itself of the powers conferred by R.S. 33:4721 through 4729, the legislative body of the municipality shall appoint a zoning commission whose function it shall be to recommend the boundaries of the various original districts as well as the restrictions and regulations to be enforced therein, and any ***supplements, changes, or modifications*** thereof. Before making any recommendation to the legislative body of the municipality, the zoning commission shall hold a public hearing. Notice of the time and place of the hearing shall be published at least three times in the official journal of the municipality, or if there be none, in a paper of general circulation therein, and at least ten days shall elapse between the first publication and date of the hearing. After the hearing has been held by the zoning commission, it shall make a report of its findings and recommendations to the legislative body of the municipality. ***The legislative body shall not hold its public hearings or take action until it has received the final report of the zoning commission***. (emphasis added).

[10] The St. John the Baptist Parish Home Rule Charter is annexed as Exhibit 6 to Defendant Greenfield's Brief. These provisions were in effect at the time the Ordinance was passed.

4. Zoning Ordinances and Amendments Have Additional, Heightened Requirement for Passage, including Planning Commission approval. [11]

Sec. 113-76 of the Code of Ordinances provides that *"no amendment* [to the zoning regulations, including the official map] shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation" and further that "the planning commission shall give public notice and hold a public hearing thereon as required herein." (emphasis added).

Sec. 113-78 governs the procedure for amendments particular to the official zoning map and sets out the requirements for action by the Planning Commission, including, notice, public hearing, and a report and recommendation. Sec. 113-78(8) specifically prohibits any action by the Parish Council with regard to zoning map changes until it has received a report from the Planning Commission.

Sec. 113-77(b) of the Code of Ordinances provides that no zoning "amendment, or supplement, or change to the regulations, restrictions or boundaries" shall be made unless "unless it is determined by the planning commission that [such change] should be made, except as otherwise provided herein."

Section 113-79 sets out the guidelines and criteria the Planning Commission is to apply.

5. All Zoning Changes Must Be Reflected on Official Zoning Map.

Sec. 113-143(b)(1) of the Code of Ordinances provides that "if changes are made to district boundaries or other matter portrayed on the official zoning map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the parish council with a revision date and zoning case number entered onto the zoning map." Sec. 113-143(b)(2) provides that the "official zoning map, which shall be located in the parish engineer's office, shall be the final authority as to the current zoning status of all lands and waters in the unincorporated areas of the parish."

Sec. 113-143(b)(3) provides that if the official map ever becomes "damaged, lost, destroyed or difficult to interpret by reason of the nature or number of changes, the parish council may, by resolution, adopt a new official zoning map which correct drafting errors or omissions, but shall not amend the original official zoning map." Further, the "prior maps remaining shall be

[11] Each of the provisions set forth below were in effect as of 1988.

preserved as a public record together with all available records pertaining to the adoption or amendment."

LAW AND ARGUMENT

Summary judgment is proper where there is no genuine issue of material fact, and where judgment may be entered as a matter of law. *Cates v. Beauregard Electric Coop.,* 328 So.2d 367 (La. 1976). Relevant state and parish law impose a suite of heightened procedural requirements for zoning regulations – additional layers of transparency, public notice and input, and democratic accountability – to ensure the legitimacy of ordinances that impact community members' lives, health, safety, and property. *See, e.g.,* La. R.S. 33:4723-4727. Here, in addition to the specter of self-dealing that hangs over this Ordinance, the uncontested facts, including new facts subsequently revealed after discovery, show a myriad of substantial procedural violations which demonstrate that Plaintiffs are entitled to summary judgment as a matter of law.

I. Because It Is Not Genuinely Disputed that the Parish Council Violated State and Parish Law When It Introduced and Approved the 300-foot I-1 Buffer Zone at the Last Minute Without Following Statutory Prerequisites, Plaintiffs Are Entitled to Summary Judgment as a Matter of Law.

A 300-foot I-1 buffer zone was unlawfully inserted into Ordinance 90-27 at the last minute as shown in the minutes of the Parish Council meeting when the ordinance was adopted.[12] The minutes show that at 9 p.m., two-and-a-half hours *after* the final public hearing on Ordinance 90-27 began and moments before the Parish Council voted to approve the ordinance, a council member moved to amend the proposed zoning maps to insert a 300-foot I-1 buffer (which would have the effect of a reducing a previously enacted 600-foot I-1 buffer zone, as discussed further below). Specifically, the text added was as follows:

> Amendment: proposed zoning map submitted under Ordinance 90-27 to reflect the following: where ever 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

The amendment was approved and immediately thereafter the Council proceeded to pass the ordinance, before taking a five-minute recess "because of audience disruption" as shown in the minutes, a detail of which is reproduced below.

[12] Minutes of Proceedings, Exhibit P-2.

At 9:00 PM, the meeting re-convened.

Councilman McTopy stated that he conferred with Legal Counsel regarding whether or not he would be able to vote on the ordinance. Legal Counsel told Mr. McTopy that since Mr. McTopy has a vested interest in the batture property of the Whitney Plantation that he (McTopy) would have to recuse himself of voting.

Mr. Lewis moved and Mr. Wolfe seconded the motion to amend the proposed zoning maps submitted under Ordinance 90-27 to reflect the following: Where ever 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. The vote in favor of the motion was unanimously approved with one recusal (McTopy).

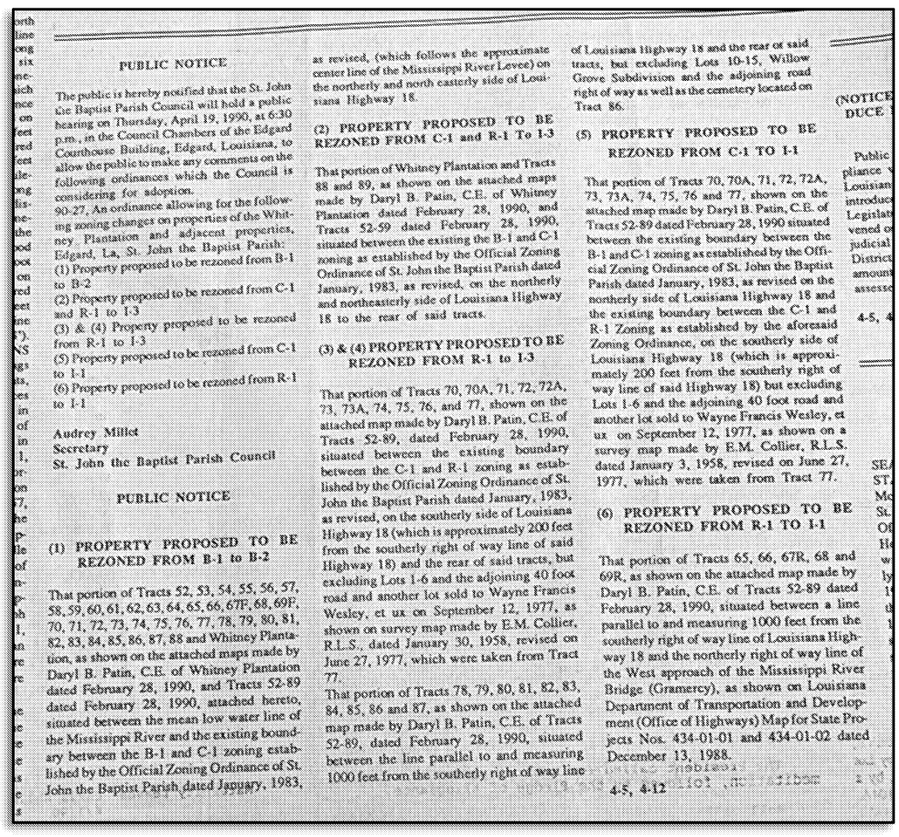
90-27 (Public hearing held)(As amended) An ordinance allowing for the following zoning changes on properties of the Whitney Plantation and adjacent properties Edgard, LA, St. John the Baptist Parish: (1) property proposed to be rezoned from B-1 to B-2 (2) property proposed to be rezoned from C-1 and R-1 to I-3 (3) & (4) property proposed to be rezoned from R-1 to I-3 (5) property proposed to be rezoned from C-1 to I-1 (6) property proposed to be rezoned from R-1 to I-1. (Amendment) proposed zoning map submitted under Ordinance 90-27 to reflect the following: where ever an I-3 zone abuts a R-1 zone thre shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1, was offered for adoption by Mr. Lewis, seconded by Mr. Wolfe and unanimously approved with one recusal (McTopy).

Again because of audience disruption, Mr. Wolfe moved and Mr. Duhe seconded the motion to recess for 5 minutes. The vote in favor of the motion was unanimously approved with no absences.

At 9:20 PM, the meeting re-convened.

Excerpt from Exhibit P-2 – Proceedings of the St. John the Baptist Parish Council, April 19, 1990

As would be expected with a last-minute addition, the public notices published in the official journal in advance of the hearings on the ordinance contained no mention of an amendment of a 300-foot, I-1 buffer between I-3 and residential zones. The public notices only provide advance notice of the six groupings of proposed changes before the amendment that was added.[13]



PUBLIC NOTICE

The public is hereby notified that the St. John the Baptist Parish Council will hold a public hearing on Thursday, April 19, 1990, at 6:30 p.m., in the Council Chambers of the Edgard Courthouse Building, Edgard, Louisiana, to allow the public to make any comments on the following ordinances which the Council is considering for adoption.

90-27, An ordinance allowing for the following zoning changes on properties of the Whitney Plantation and adjacent properties, Edgard, La, St. John the Baptist Parish:
(1) Property proposed to be rezoned from B-1 to B-2
(2) Property proposed to be rezoned from C-1 and R-1 to I-3
(3) & (4) Property proposed to be rezoned from R-1 to I-3
(5) Property proposed to be rezoned from C-1 to I-1
(6) Property proposed to be rezoned from R-1 to I-1

Audrey Millet
Secretary
St. John the Baptist Parish Council

PUBLIC NOTICE

(1) PROPERTY PROPOSED TO BE REZONED FROM B-1 to B-2

That portion of Tracts 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67F, 68, 69F, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88 and Whitney Plantation, as shown on the attached maps made by Daryl B. Patin, C.E. of Whitney Plantation dated February 28, 1990, and Tracts 52-89 dated February 28, 1990, attached hereto, situated between the mean low water line of the Mississippi River and the existing boundary between the B-1 and C-1 zoning established by the Official Zoning Ordinance of St. John the Baptist Parish dated January, 1983, as revised, (which follows the approximate center line of the Mississippi River Levee) on the northerly and north easterly side of Louisiana Highway 18.

(2) PROPERTY PROPOSED TO BE REZONED FROM C-1 and R-1 To I-3

That portion of Whitney Plantation and Tracts 88 and 89, as shown on the attached maps made by Daryl B. Patin, C.E. of Whitney Plantation dated February 28, 1990, and Tracts 52-59 dated February 28, 1990, situated between the existing the B-1 and C-1 zoning as established by the Official Zoning Ordinance of St. John the Baptist Parish dated January, 1983, as revised, on the northerly and northeasterly side of Louisiana Highway 18 to the rear of said tracts.

(3) & (4) PROPERTY PROPOSED TO BE REZONED FROM R-1 to I-3

That portion of Tracts 70, 70A, 71, 72, 72A, 73, 73A, 74, 75, 76, and 77, shown on the attached map made by Daryl B. Patin, C.E. of Tracts 52-89, dated February 28, 1990, situated between the existing boundary between the C-1 and R-1 zoning as established by the Official Zoning Ordinance of St. John the Baptist Parish dated January, 1983, as revised, on the southerly side of Louisiana Highway 18 (which is approximately 200 feet from the southerly right of way line of said Highway 18) and the rear of said tracts, but excluding Lots 1-6 and the adjoining 40 foot road and another lot sold to Wayne Francis Wesley, et ux on September 12, 1977, as shown on survey map made by E.M. Collier, R.L.S., dated January 30, 1958, revised on June 27, 1977, which were taken from Tract 77.

That portion of Tracts 78, 79, 80, 81, 82, 83, 84, 85, 86 and 87, as shown on the attached map made by Daryl B. Patin, C.E. of Tracts 52-89, dated February 28, 1990, situated between the line parallel to and measuring 1000 feet from the southerly right of way line of Louisiana Highway 18 and the rear of said tracts, but excluding Lots 10-15, Willow Grove Subdivision and the adjoining road right of way as well as the cemetery located on Tract 86.

(5) PROPERTY PROPOSED TO BE REZONED FROM C-1 TO I-1

That portion of Tracts 70, 70A, 71, 72, 72A, 73, 73A, 74, 75, 76 and 77, shown on the attached map made by Daryl B. Patin, C.E. of Tracts 52-89 dated February 28, 1990 situated between the existing boundary between the B-1 and C-1 zoning as established by the Official Zoning Ordinance of St. John the Baptist Parish dated January, 1983, as revised on the northerly side of Louisiana Highway 18 and the existing boundary between the C-1 and R-1 Zoning as established by the aforesaid Zoning Ordinance, on the southerly side of Louisiana Highway 18 (which is approximately 200 feet from the southerly right of way line of said Highway 18) but excluding Lots 1-6 and the adjoining 40 foot road and another lot sold to Wayne Francis Wesley, et ux on September 12, 1977, as shown on a survey map made by E.M. Collier, R.L.S. dated January 3, 1958, revised on June 27, 1977, which were taken from Tract 77.

(6) PROPERTY PROPOSED TO BE REZONED FROM R-1 TO I-1

That portion of Tracts 65, 66, 67R, 68 and 69R, as shown on the attached map made by Daryl B. Patin, C.E. of Tracts 52-89 dated February 28, 1990, situated between a line parallel to and measuring 1000 feet from the southerly right of way line of Louisiana Highway 18 and the northerly right of way line of the West approach of the Mississippi River Bridge (Gramercy), as shown on Louisiana Department of Transportation and Development (Office of Highways) Map for State Projects Nos. 434-01-01 and 434-01-02 dated December 13, 1988.

4-5, 4-12

Detail from Exhibit P-4: The Public Notice of Hearing to be held April 19, 1990 contains no language concerning an amendment of a 300-foot, I-1 buffer.
It only includes the six groupings of proposed changes before the amendment was added at the April 19th hearing.

[13] Compare to Exhibit P-1, Ordinance 90-27.

A. Because the 300-foot I-1 Buffer Was Not Submitted to the Planning Commission Nor Subject to Public Notice and Hearings as Required by State and Parish Law, the Zoning Ordinance is Null and Void.

Because "zoning laws are in derogation of the rights of private ownership," Louisiana courts "require strict compliance with the statutory procedures regulating enactment of zoning laws." *The Descendants Project v. St. John the Baptist Parish,* No. 22-C-264 (La. App. 5 Cir. 6/29/22) *citing Fauberg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 620.

The last-minute insertion of an I-1 zone violated the provisions of state law and the Parish's Home Rule Charter and Code of Ordinances governing changes or amendments to zoning regulations. In state law, La. R.S. 33:4726(A) prohibited a zoning authority from taking action on "any supplements, changes, or modifications" of zoning regulations until it has received a final report from the zoning or planning commission which is required to hold a public hearing, prepare findings and recommendations, and provide a report to the governing body.

Courts have invalidated zoning ordinances on grounds that municipalities failed to refer such changes or supplements to a planning commission. *See, e.g., Schmitt v. City of New Orleans,* 461 So.2d 574, 578 (La. Ct. App.1984), *writ denied,* 464 So.2d 318 (La.1985), and *writ denied*, 464 So.2d 319 (La.1985). (holding two ordinances invalid for lack of referral to the planning commission). *See also, Talbert v. Planning Comm'n, City of Bogalusa,* 230 So.2d 920, 925 (La. Ct. App.1970) (holding that the requirements of La. R.S. 33:4726 applied as well to amendments to zoning ordinances and regulations provided for in La. R.S. 33:4725).

Likewise, in no less than three places, the Parish's Code of Ordinances repeatedly mandates notice, a public hearing, review and reporting by the Planning Commission before any changes are made to the zoning map or ordinances. Sec. 113-76 of the Parish Code of Ordinances provides that with regard to zoning, "no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation," and only after the planning commission has given public notice and held a public hearing on the amendment in accordance with the provisions of the Code.[14]

In the next section of the code of ordinances pertaining to amendments to the parish's zoning regulations, including the official zoning map, Sec. 113-77(b) further provides that

[14] Relevant provisions from Code of Ordinances, annexed hereto as Exhibit P-7.

"No amendment shall be made unless it is determined by the planning commission that the *amendment, or supplement, or change* to the regulations, restrictions or boundaries should be made, except as otherwise provided herein." (emphasis added). Sec. 113-78(8) again specifically prohibits any action by the Parish Council with regard to zoning map changes until it has received a report from the Planning Commission. Finally, Art. IV(A)(4) of the Home Rule Charter of St. John the Baptist Parish requires that any act that "[a]dopts or modifies the official map, plot, subdivision ordinance, regulations, or zoning plan" be enacted by ordinance. Art. IV(B), which applies to ordinances of all kinds, requires that the Parish Council issue public notice via publication in the official journal, and conduct a public hearing before taking action on a zoning change.

None of these steps happened with respect to the amendment.

Both state law and parish law underscore how vitally important the stakes are in zoning ordinances as evidenced by their repeated insistence upon planning commission involvement in the process before any change and with very clear procedural requirements of public notice and hearings before the Commission and the Council. The Parish Council completely ignored these mandates when it inserted the I-1 buffer at the last minute and swiftly moved to approve it.

This fact, standing alone, renders the Ordinance void *ab initio* and the Plaintiffs entitled to summary judgment. It has "long been the law in Louisiana that an unlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed." *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); 283 So.3d 498, citing *Vieux Carre Property Owners and Associates, Inc. v. City of New Orleans,* 246 La. 788, 167 So.2d 367, 371 (1964) (ordinance that violated home rule charter was null and void *ab initio*). *See also, e.g., Gurley v. City of New Orleans,* 41 La.Ann. 75; 5 So. 659, 661 (1889) (describing city ordinance and contract in violation of a prohibitory law as absolutely null), *Davis v. Town of St. Gabriel,* 2001-0031 (La.App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied,* 2002-0771 (La. 10/14/02); 827 So.2d 420, and *writ denied,* 2002-0803 (La. 10/14/02); 827 So.2d 420 (agreement in derogation of state building permit requirements was an absolute nullity and variance issued based upon that agreement was unlawful and any construction pursuant to the invalid permit would be illegal), *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1

Cir. Nov. 9, 2011) (noting ruling in earlier proceeding that district court had ruled conditional use permit void *ab initio* because a traffic study had not been done).

B. The 300-foot I-1 Buffer Dramatically Altered and Reduced a Pre-Existing 600-foot Buffer Requirement.

It is also now apparent that the last-minute insertion of the 300-foot I-1 buffer was not just an amendment of the proposed Ordinance 90-27, it was an amendment of a pre-existing 600-foot buffer required between I-3 and residential zones on the Parish's official zoning map. The last-minute change made Plaintiffs and other neighbors of the Wallace tract worse off than they would have been without it.

In 1988, less than two years before Ordinance 90-27 was passed, the same Parish Council passed Ordinance 88-68, to amend Ordinance 86-36 which adopted the "Official St. John the Baptist Parish Zoning Map" to require that "[w]here an Industrial 3 district abuts a Residential 1 district, an area six (600) hundred feet wide from the R-1 district shall be Re-zoned Industrial 1, up to State Highways."[15] The ordinance also noted that this was to apply "Parishwide."[16] Importantly, Ordinance 88-68 was passed by the same Council members who passed Ordinance 90-27, and both were signed by then-President Lester Millet Jr. so the pre-existing buffer zone requirement was known to them.[17] That the ordinance was to apply parish-wide and irrespective of specific mention in subsequent ordinances was explained in a case cited in Defendants' briefing. *See* Greenfield Br. at 13, *citing Save Our Neighborhoods v. St. John the Baptist Par.,* 592 So. 2d 908, 914 (La. App. 5th Cir. 1991), *writ denied,* 594 So. 2d 892 (La. 1992).

While the Parish Council could have opted to amend or reduce the 600-foot requirement contained in Ordinance 88-68 when it passed Ordinance 90-27, it must have done so in accordance with its own law as well as state law governing zoning changes. It failed to do so when it inserted the 300-buffer zone at the last minute and skipped over all of the procedural requirements and involvement of the Planning Commission.

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[15] Ordinance 88-68, annexed hereto as Exhibit P-3.

[16] *Id.*

[17] Compare to Ordinance 90-27 annexed as Exhibit P-1, adopted by same Parish Council members with the exception of McTopy who abstained on Ordinance 90-27.

C. Amending the Pleadings to Conform to the Evidence

La. C.C.P. art. 1154 provides that "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleading."[18] With regard to the 300-foot buffer inserted into Ordinance 90-27, Plaintiffs' complaint initially pled that the "insertion of the 300-foot buffer requirement was a dramatic departure from the much larger distance requirement that was supposed to apply to I-3/heavy industrial ones – 2,000 feet from residential dwellings with a density of 1 dwelling per acre gross area."[19]

Through further study and review of subsequently revealed facts and analysis, particularly of the text of Ordinance 88-68 and the appellate opinion in *Save Our Neighborhoods, supra,* cited in Defendants' summary judgment briefing,[20] undersigned counsel would now amend the pleading to reflect that the 300-foot I-1 buffer was improperly added at the last minute *and* was a dramatic departure from the pre-existing 600-foot I-1 buffer required by Ordinance 88-68.[21]

II. Because It Is Not Genuinely Disputed that the Ordinance on Its Face Violated the Home Rule Charter's Requirement that the Delivery to and Receipt from the Parish President Be Recorded, and that It Was Not Authenticated, Plaintiffs are Entitled to Summary Judgment as a Matter of Law.

Ordinance 90-27 also violated two other provisions of the section of the Home Rule Charter governing ordinances. Art. IV, Sec. C(2) of the Charter states: "The council secretary *shall record* upon the ordinance or resolution the date of its delivery to and receipt from the

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[18] In full, La. C.C.P. art. 1154 states:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised by the pleading. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to so amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby, and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense on the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

[19] Second Amended Petition for Declaratory and Injunctive Relief, ¶ 33, annexed as Exhibit 1 to Defendant Greenfield's brief.

[20] 592 So. 2d 908, 914 (La. App. 5th Cir. 1991), *writ denied,* 594 So. 2d 892 (La. 1992) cited in Def. Greenfield's Br. at 13.

[21] Further, while it is not necessary for the Court to engage with the question of locational criteria, Plaintiffs would note that the evidence offered by Defendants provides additional support that the locational criteria was improperly applied to Wallace. Defendants offer an affidavit from the then-Zoning Administrator who approved the ordinance at the time and the opinion in *Save Our Neighborhoods* which explains that his method was to count residences *within* an area of 2,000 feet of the heavy industrial zone and then calculate the density based on that area. *See* Greenfield Br. at 13, citing *See Save Our Neighborhoods,* 592 So. 2d at 913. However, that is not what the ordinance calls for – it clearly requires that heavy industrial zones be located a *"minimum of 2,000 feet away from"* neighborhoods or residential areas with at least one dwelling per acre. Code of Ordinances, Sec. 113-410 (emphasis added). The term "away from" is clear and unambiguous and the opposite of "within." *See* La. C.C. art. 9 ("When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.").

parish president." (emphasis added). The council secretary failed to do so upon Ordinance 90-27.[22] This provision has been complied with in other ordinances so it was a familiar requirement. For example, the parish secretary did record this information upon Ordinance 88-68.[23]

Art. IV, Sec. F of the Charter states: "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." (emphasis added). Ordinance 90-27 was not authenticated by the council secretary as required by the Charter until 32 years later during the pendency of these proceedings. The authentication required for ordinances and resolutions is specific to how ordinances are to be treated and deemed official, and is distinct from authentication of public records for evidentiary purposes. *See, e.g.* La. Code of Evid. Art. 904.

Both of these requirements appear in Article IV of the Home Rule Charter which governs "Ordinances and Resolutions." Defendants suggest, without any authority, that the requirements for validity of zoning ordinances are only those provisions that appear in Art. VI, Sec. B entitled "Enactment of an ordinance." However, their argument would cut the Parish President out of the process altogether as the provisions concerning his role in approving or vetoing an ordinance appear in Art. IV, Sec. C "Submission of ordinances & resolutions to the parish president." It would also leave out the key provisions of the Code of Ordinances containing the additional requirements for enactment of *zoning* ordinances – such as submission to the Planning Commission, and its responsibilities for issuing notice, holding a public hearing, and issuing a report and recommendation.

All of these requirements in the Charter and the Code are intended as layers of protection and checks and balances to ensure that the zoning process is thorough, and fully transparent and accountable, in recognition of the property rights, health and safety of residents at stake in any zoning decision. These omissions are further grounds for finding the ordinance to be a nullity.

III. It Is Not Genuinely Disputed That the Ordinance Was Not Enacted 'Honestly.'

All of the foregoing grounds for invalidation of the ordinance were not addressed by the Court in 1990 and independently entitle Plaintiffs to summary judgment as a matter of law. Nevertheless, the record in this case is even worse. The record confirms that Ordinance 90-27 was the product of, and instrumental to, an illegal scheme by the Parish President to commit

[22] Exhibit P-1.

[23] *See* Exhibit P-3.

extortion, money laundering, and abuse of power. In 1996, a federal jury found beyond a reasonable doubt that the President of St. John the Baptist Parish, Lester Millet Jr., abused his position, including by promising to "push through" the re-zoning ordinance of the tract of land at issue here, and threaten residents with legal action if they did not sell to Formosa, the company seeking to build a rayon facility there, and then illegally profited off the sale of land he brokered after the ordinance was passed as he promised.[24]

On April 19, 1990, Millet made good on his promise to "push through the needed rezoning" when the St. John the Baptist Parish Council voted to rezone the Wallace tract in passing Ordinance 90-27, and when he subsequently approved it. Under the Parish's Home Rule Charter, as Parish President, he had the power to approve or veto the ordinance and was thus a mandatory, integral part of the process of the ordinance becoming law in the Parish. Charter, Article IV, Sec. C(1) and (2). As can be seen on the ordinance, Lester Millet Jr. signed it, thereby approving the ordinance, a final step in the passage of the legislation into law.[25] He – and his corrupt actions – were the but-for cause of the Ordinance's passage.

Allegations of fraud, corruption, or bad faith in zoning proceedings or enactments are accorded special consideration by the courts. *See McCann v. Morgan City*, 173 La. 1063, 1075; 139 So. 481, 485 (1932). *See also, See Four States Realty Co., Inc. v. City of Baton Rouge,* 309 So. 2d 659, 666 (La. 1974) and *Truitt v. W. Feliciana Par. Gov't,* 2019-0808, p. 5 (La.App. 1 Cir. 2/21/20); 299 So.3d 100, 103–04 ("[W]hen there is room for two opinions, [a zoning] action is not arbitrary or capricious *when exercised honestly* and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.") (emphasis added); *Saint v. Irion*, 165 La. 1035, 1057; 116 So. 549, 556 (1928) (courts will "not undertake to control the discretion of a public officer or board, unless arbitrarily or fraudulently exercised"),

In 1992, the Fifth Circuit Court of Appeal, without the benefit of knowing of the corruption that gave rise to and was furthered by the ordinance, still found the substantive validity of the ordinance to be a close call. "[W]e agree that the decision was probably debatable; however, the authority of the courts in such instances must bow to the police power of the elected governing body." *Save Our Wetlands, Inc. v. St. John The Baptist Par.,*

[24] Exhibits P-5(a) and P-5(b).

[25] Exhibit P-1.

600 So. 2d 790, 791 (La. App. 5th Cir. 1992), *writ denied,* 604 So. 2d 1005 (La. 1992). Had they known then what is now in the record, this litigation would not be necessary because "[f]raud vitiates all things." *Broussard v. Doucet,* 236 La. 217, 223; 107 So.2d 448, 451 (1958). The law "furnishes a remedy against fraud, when exposed, whatever guise it may assume." *Bd. of Comm'rs of Orleans Levee Dist. v. Shushan,* 197 La. 598, 613; 2 So.2d 35 (1941). "Fraud or bad faith with respect either to context or manner of arriving at a decision in an administrative zoning matter, is sufficient ground for judicial reversal of the decision." 8A McQuillin Mun. Corp. § 25:417 (3d ed.) (internal citations omitted).[26]

The U.S. Supreme Court also made this point in reference to local law in Louisiana. In 1916, the U.S. Supreme Court reversed the Louisiana Supreme Court when it held that a law creating a drainage district in Iberia and St. Mary parishes "solely with the view of deriving revenues" from an island would be an arbitrary abuse of power. *Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary Drainage Dist.,* 239 U.S. 478, 484 (1916). The Court also disagreed with the Louisiana Supreme Court's assessment that no fraud had been alleged in the matter. *Id.*

Defendants suggest that the Parish President's extensive corruption of the process, for which he was found guilty beyond a reasonable doubt, should have no bearing on the legality of the ordinance as the ordinance could have been enacted without Millet signing and ratifying it. But that is not what happened. What did happen is that Millet brought the deal and the need to rezone to the Parish; promised to push through the needed rezoning, threatened adjacent property owners with expropriation, and signed the resulting ordinance into law when it came to him for approval per the Home Rule Charter.[27]

As demonstrated above, the clear evidence of procedural violations – even absent the overwhelming evidence that Millet corrupted that process further – mandates nullifying the Ordinance. However, the Court should not countenance such manifest corruption and financial self-dealing in a zoning process and should find they are additional circumstances that vitiate and nullify the resulting ordinance.

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[26] The Louisiana Civil Code defines fraud as: "misrepresentation or suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other." La. Civ. Code art. 1953.

[27] *See United States v. Millet*, 123 F.3d 268 (5th Cir. 1997), Exhibit P-5(b); and Ordinance 90-27, Exhibit P-1.

IV. The Prior Rulings on Ordinance 90-27 Are Not Controlling As They Did Not Address the Issues Raised in this Matter.

The prior rulings on Ordinance 90-27 are not controlling for this Court given that neither the improper last-minute amendment of I-1 zones, nor the corruption that surrounded the Ordinance were before those courts.

The Fifth Circuit Court of Appeal noted that the "primary thrust of appellant's argument is that the council was not fully informed before agreeing with the rezoning petition" because the Parish did not obtain adequate feasibility and environmental studies. *See Save Our Wetlands, Inc. v. St. John The Baptist Par.,* 600 So. 2d 790, 791 (La. App. 5th Cir. 1992), *writ denied*, 604 So. 2d 1005 (La. 1992), annexed hereto as Exhibit P-6. Similarly, the district court noted that the Plaintiffs were required to show that "the *results* of the ordinance [were] arbitrary and capricious, or that the zoning ordinance bears no rational or reasonable relationship to the health, safety, morals or general welfare of the community." *Save Our Wetlands v. St. John the Baptist Par.,* No. 26371, at *144, 40th Judicial District Court, Reasons for Judgment, Aug. 1, 1991.[28] In other words, the earlier challenge was to the merits of the proposed zoning changes, i.e. the results and substance of the decision, and not to the process by which the decision was made. The earlier challenge was not that the ordinance was passed unlawfully and therefore void *ab initio*, but that the decision to rezone was not well-founded. In the latter circumstances, the courts were required to defer to the local government decision on the appropriateness of the zoning changes.

The question of the procedurally improper insertion of the 300-foot I-1 buffer amendment was not addressed in either court decision, nor in the letter of the Zoning Administrator that was submitted to the Commission concerning Ordinance 90-27. And, as discussed above, the proposed amendment also did not appear in any of the six public notices of hearings on the proposed ordinance. With regard to the corruption surrounding the Ordinance, the earlier courts could not have addressed that because it did not come to light until much later when the Parish President was convicted.

The issues involved in the earlier ruling are distinct matters from those at issue here as Plaintiffs' claim is that the ordinance is absolutely null, and "an [u]nlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed."

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[28] Trial Court decision annexed as Exhibit 5 to Defendant Greenfield's Motion for Summary Judgment.

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); 283 So.3d 498.

V. Why the Other Maps Matter

Sec. 113-143(b)(1) of the Code of Ordinance provides that "if changes are made to district boundaries or other matter portrayed on the official zoning map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the parish council with a revision date and zoning case number entered onto the zoning map." Sec. 113-143(b)(2) provides that the "official zoning map, which shall be located in the parish engineer's office, shall be the final authority as to the current zoning status of all lands and waters in the unincorporated areas of the parish."

Unfortunately, we can't know if this provision was complied with after Ordinance 90-27 was adopted because in 2012 it was revealed that the parish's official zoning map could not be located.[29] What we do know is that the map the Parish Council replaced it with did not reflect the 300-foot I-1 buffer zone amended into Ordinance 90-27 at the last minute.[30] Another survey of the property that was done in 2006 and which the Parish President and Planning Director reviewed and signed off on showed the portions purportedly rezoned by Ordinance 90-27 as I-3 heavy industrial to be zoned as R-1/residential. This map showing the heavy industrial portions to be zoned residential was even referenced in Greenfield's own purchase instruments.[31]

While the maps in and of themselves may not invalidate an otherwise validly enacted ordinance, they add to the serious concerns and questions surrounding the zoning process in the Parish, particularly given the direct violations of state and parish law in the passage of Ordinance 90-27, and the corruption that gave rise its enactment.

Conclusion

The Parish Council violated key provisions of state and parish law governing how zoning changes are to be enacted when it improperly inserted a 300-foot I-1, light industrial zone into Ordinance 90-27 at the last minute before its passage. This maneuver circumvented a series of mandatory procedural requirements and Planning Commission involvement, reduced a pre-existing buffer requirement by half, and rendered the ordinance null and void *ab initio*.

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[29] *See* Resolution 12-07adopted Feb. 15, 2012, and Minutes of Parish Council Meeting annexed as Exhibits M and N to Plaintiffs' Amended Petition.

[30] *See* Affidavit of S. Evans, annexed to Plaintiffs' Amended Petition.

[31] *See* Exhibits W-AA, annexed to Plaintiffs' Second Amended Petition.

Further, subsequently revealed corruption and self-dealing that infected the process undermines the validity of the substantive decision reached by the Parish Council and are further grounds to grant Plaintiffs summary judgment.

Petitioners respectfully request that this Court grant their motion for summary judgment and declare Ordinance 90-27 null and void.

Dated: March 6, 2023

Respectfully submitted,

PAMELA C. SPEES
La. Bar Roll No. 29679
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel & Fax (212) 614-6431
pspees@ccrjustice.org

WILLIAM P. QUIGLEY
La. Bar Roll No. 7769
Professor Emeritus
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail.

Woodside, New York, this 6th day of March, 2023

Pamela C. Spees