

FORTIETH JUDICIAL DISTRICT COURT
IN AND OF THE PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

NO.: 77305

DIVISION "C"

THE DESCENDANT S PROJECT ET AL.

VERSUS

ST. JOHN THE BAPTIST PARISH ET AL.

FILED: _____ **DEPUTY CLERK**

WRITTEN REASONS FOR JUDGMENT

----- This matter came before the Court on the 28th day of April, 2022, pursuant to Exceptions of No Cause of Action, No Right of action, and Prescription filed by Defendant/Intervenor Greenfield Louisiana, LLC (Greenfield) and Defendants St. John the Baptist Parish, St. John the Baptist Parish Council, St. John the Baptist Parish Planning Commission, and St. John the Baptist Parish Planning and Zoning (collectively known as the Parish).

Present: William Quigley and Pam Spees on behalf of The Descendant s Project, Jocyntia Banner, and Joyceia Banner (Plaintiffs).
Samuel Accardo Jr. on behalf of the Parish.
Louis Buatt, James Breaux, and Claire Bienvenu on behalf of Greenfield.

Liliana Der-rancescn - Clerk of Court
Filed: May 10, 2022 4:29 AM
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Background

This suit arises out of the rezoning of a tract of land through the passage of Ordinance 90-27 on April 19, 1990. Ordinance 90-27 was introduced by Councilman Lewis and which Councilman Wolfe joins during the council meeting. The proposal called for the following:

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

Additionally, Ordinance 90-27 reflects that the proposed zoning map submitted with the ordinance would be amended to reflect that “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.”¹ In voting on Ordinance 90-27, there were eight yeas in support of enacting the ordinance and zero nays. Councilman McTopy recused. The yea votes were provided by Councilmen Terry, Wolfe, Lewis, Duhe, Perrilloux, Lee, Haydel, and Wilson.

The land rezoned by Ordinance 90-27 as I-3 in 1990 is now undergoing construction of a grain elevator by Greenfield. Plaintiffs initially filed their suit against the Parish as a mandamus proceeding and sought in that proceeding an order of this Court finding Ordinance 90-27 an absolute nullity. Greenfield filed a motion to intervene on December 2, 2021, which was signed in open court on December 16, 2021. This Court heard exceptions pled by Greenfield and the Parish on December 16, 2021, and, in the Order signed on the same date, granted the Parish’s *Exception of Unauthorized Use of Summary Proceeding*. Plaintiffs then filed a *First Amended*

¹ Plaintiff’s Exhibit C, Ordinance 90-27

Petition on January 17, 2022 and a *Second Amended Petition for Declaratory and Injunctive Relief* on February 16, 2022. Greenfield and the Parish each filed exceptions of no cause of action, no right of action, and prescription. This Court heard oral argument on the exceptions on April 28, 2022 and denied all exceptions in open court.

Law and Analysis

I. *Exception of No Cause of Action*

The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Darville v. Texaco, Inc.*, 447 So. 2d 473 (La. 1984). Parties may not introduce evidence to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. In reviewing the petition, the court accepts well pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So. 2d 1234 (La. 1993); *Hall v. Zen-Noh Grain Corp.*, 2001-0324 (La. 4/27/01); 787 So. 2d 280. Courts should not dismiss a petition based on failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Fink v. Bryant*, 01-0987, p. 4 (La. 11/28/01); 801 So. 2d 346, 349.

At the outset, this Court notes that many of the arguments presented by the Plaintiffs have no bearing on the validity *vel non* of Ordinance 90-27. 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. Plaintiffs do not claim that these historic and cultural sites are protect^{ed} by law therefore making the Wallace tract immune from being zoned in the manner that it was. Likewise, that the Parish Planning and Zoning Commission has allegedly presented conflicting zoning maps does not invalidate Ordinance 90-27. Confusion of this nature within government cannot act to invalidate laws where they are presumably validly created through the legislative process.

a. Conflict Between Ordinance 90-27 and St. John the Baptist Parish Land Use Regulations

In their petition, Plaintiffs allege that Ordinance 90-27 violated the Parish's own Land Use Regulations when it called for a 300 foot buffer where an area zoned as I-3 abuts an area zoned as R-1. Section 113-410(1)(b) of the St. John the Baptist Parish Land Use Regulations provides, "[s]ites 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." Because the Plaintiffs allege that Ordinance 90-27 violates the Parish's own Land Use Regulations, they have stated a cause of action in their petition. *See 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 that violated Parish's Home Rule Charter was null and void *ab initio*).

b. Secretary's Alleged Failure to Authenticate Ordinance 90-27

Louisiana courts have found that, while the validity of municipal legislative acts is presumed, zoning laws are in derogation of the rights of private ownership. *Schmitt v. City of New Orleans*, 461 So. 2d 574 (La. App. 4 Cir. 1984) (citing *Smith v. City of Alexandria*, 300 So. 2d 561 (La. App. 3 Cir. 1974); *Roberts v. Jefferson Parish Council*, 235 So. 2d 131 (La. App. 4 Cir. 1970)). Therefore strict compliance

with the statutory procedures regulating enactment of zoning laws has been required by the courts. *Id.* (citing *De Latour v. Morrison*, 34 So. 2d 783 (La. 1948); *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)). “Failure to comply with such procedures is fatal to the validity of the zoning ordinance.” *Id.* (citing *State ex rel Chachere v. Booth*, 199 So. 654 (1940); *State ex rel Shaver v. Mayor and Councilmen of Town of Coushatta*, 196 So. 388 (La. App. 2 Cir. 1940)). As the Plaintiffs here have alleged that the Parish did not follow its own statutory procedures for enactment of an ordinance when the secretary allegedly failed to authenticate Ordinance 90-27, and the court takes this allegation as true, the Plaintiffs have stated a cause of action on this allegation as well.

II. *Exception of No Right of Action*

The exception of no right of action tests whether the plaintiff who seeks relief is the person in whose favor the law extends a remedy. La. C.C.P. art. 681. Determination of whether a plaintiff has a right of action is a question of law. *1900 Highway 190, L.L.C. v. City of Slidell*, 2015-1755, p. 6 (La. App. 1 Cir. 6/3/16); 196 So. 3d 693, 698. In *Lauer v. City of Kenner*, the Fifth Circuit addressed whether particular plaintiffs, in an action challenging a zoning ordinance, enjoyed a right of action. 536 So. 2d 767 (La. App. 5 Cir. 1988), *writ denied*, 538 So. 2d 594 (La. 1989). The Court noted that “a plaintiff questioning the actions of public boards must have an interest which is distinct from the interests of the public at large.”

Here, the Plaintiffs challenge the validity of Ordinance 90-27, in part, based on its violation of the Parish’s own Land Use Regulations. The Plaintiff’s property is within the 2,000 foot buffer required by Section 113-410(1)(b). This 2,000 foot buffer zone was arguably designed to protect areas zoned as R-1 from the operations

typically present in areas zoned as I-3. Since Ordinance 90-27 affects the protection of the Plaintiff's land, the Plaintiff's have an interest in this suit which is distinct from the interest of the public at large. As such, the Plaintiffs here are the appropriate party to bring this suit.

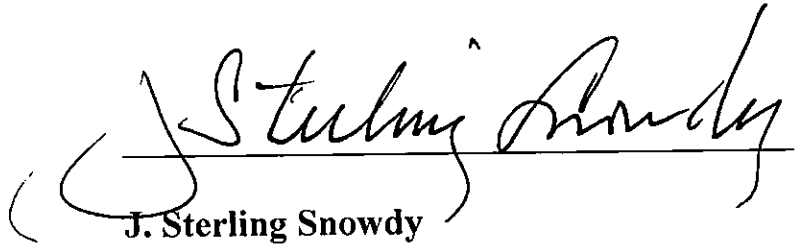
III. *Exception of Prescription*

In *McMahon v. City of New Orleans*, the Fourth Circuit invalidated an Ordinance which violated the Parish's Home Rule Charter. The Fourth Circuit determined that the ordinance was "unlawful, invalid, and null and void *ab initio*, and was 'in reality no law and in legal contemplation is as if had never been passed.'" *McMahon v. City of New Orleans*, 2018-0842, p. 6 (La. App. 4 Cir. 9/4/19); 280 So. 3d 796 (citing *Vieux Carre Property Owners and Associates, Inc. v. City of New Orleans*, 167 So. 2d 367 (1964)). Because the ordinance challenged here could potentially be, in effect, no law, prescription cannot run against the Plaintiffs' cause of action.

Conclusion

Plaintiffs and Defendants focus much of their argument on applicability of La. C.C. arts. 7 and 2030. However, none of this Court's research regarding nullity of an ordinance has produced arguments on either article. Despite this, Louisiana courts have found that ordinances that violate the law are null and void *ab initio*. Therefore, this Court finds that the Plaintiffs here have stated a cause of action, these Plaintiffs are the proper party to bring this suit, and prescription has not run against the Plaintiffs' challenge to Ordinance 90-27.

Written Reasons signed on the 10 day of May, 2022 in
Edgard, Louisiana.



J. Sterling Snowdy

Judge, Fortieth Judicial District Court

NOTIFY ALL PARTIES

5/13/22
DB
ICC S. Accardo
ICC L. Buatt