40th JUDICIAL DISTRICT COURT

PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO. 77305 **DIVISION "C"**

THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER

VERSUS

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

FILED: ______________________________ **______________________________**
DEPUTY CLERK

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT AND REPLY MEMORANDUM IN SUPPORT OF GREENFIELD'S MOTION FOR SUMMARY JUDGMENT

Intervenor, Greenfield Louisiana, LLC ("Greenfield") filed a motion for summary judgment in which it established the complete lack of factual and legal support for Plaintiffs' declaratory judgment action that seeks a declaration that Ordinance 90-27 of St. John the Baptist Parish (the "Ordinance") is void. Plaintiffs did not dispute in their opposition a single one of the Uncontested Material Facts Greenfield listed in its motion, nor did they dispute the analysis set forth in Greenfield's Statement of Essential Legal Elements.

Instead, Plaintiffs now move for summary judgment asserting new claims and theories which were not pled in their petition or amended petitions, but which they contend establish the invalidity of the Ordinance passed more than thirty years ago.[1] In doing so, however, Plaintiffs simply ignore statutory authority which contradicts their new arguments, and in some cases, omit critical language from the statutes which they do cite--omissions which clearly show that their purported authority does not even apply to St. John the Baptist Parish. As set forth more fully below and in the memorandum in support of Greenfield's Motion for Summary Judgment,

[1] While Louisiana courts have held that a party cannot obtain summary judgment based on facts and theories not alleged in the petition (*Davidson v Sanders*, 2018-308 (La. App. 3 Cir. 12/6/18) 261 So.3d 889), in the interests of both justice and finality, Greenfield waives any objections to the new facts and theories raised for the first time in Plaintiffs' Cross Motion.

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 Ordinance 90-27 is absolutely null, and Greenfield is entitled to summary judgment dismissing their claims and demands with prejudice.

STATEMENT OF ESSENTIAL LEGAL ELEMENTS

Initially, Greenfield notes that Plaintiffs have not disputed any of the Essential Legal Elements set forth by Greenfield in its Motion for Summary Judgment. In accordance with Rule 9.10 of the Uniform Rules for the District Courts, set forth below are the Essential Legal Elements set forth by Plaintiffs in their Cross-Motion for Summary Judgment, followed by Greenfield's response/opposition. For the convenience of the Court, Plaintiffs' assertions are in standard font with Greenfield's response in italics.

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 Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 620.

Greenfield does not dispute this statement.

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).

While Greenfield does not dispute this statement from Four States Realty, it is taken out of context. In that case, there was no overture or suggestion that any person's action on the downtown Baton Rouge rezoning at issue was dishonest or corrupt. Thus, the language Plaintiffs rely upon is pure dicta. Moreover, there is no evidence whatsoever of dishonesty or corruption in the passage of Ordinance 90-27.

*Further, zoning ordinances are presumed to have been adopted for valid purposes and the discretion of the government body will not be interfered with by the courts, 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). Plaintiffs have made no such showing.

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:

Plaintiffs offer no source for the self-serving statement above, and thus, Greenfield objects to this statement to the extent it purports to articulate a legal standard applicable to this case.

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) 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 (emphasis added).

Greenfield objects to this statement. As set forth more fully hereafter, La. R.S. ***33:4724(b) applies only to municipalities****. Plaintiffs mislead the court by suggesting it applies to "local government zoning." Further, Greenfield notes there was notice and a public hearing of the Ordinance, including a public hearing after the amendment was proposed at the Council meeting.*

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.

Greenfield objects to this statement. As with the previous legal element above, La. R.S. 33:4726 applies only to municipalities. Plaintiffs mislead the court by suggesting it applies to "a local legislative body." The statute, as it existed in 1990, contains no such language.[2]

Further, Plaintiffs offer no evidence that the Planning Commission failed to provide public notice or conduct a public hearing.[3] *In addition, the minutes offered by Plaintiffs reflect that the Planning and Zoning Commission unanimously approved the rezoning request.*

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.

Greenfield does not dispute this statement. Further, in this case, the zoning change was enacted by an ordinance (No. 90-27).

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."

Greenfield disputes this statement as it is incomplete and misleading. Art IV, Sec C(2) refers to recordation of the Ordinance, but this action is taken after the Ordinance has been adopted and has nothing to do with its validity.

Further, the purpose of delivery to the Parish President is only so that the council

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[2] Copies of La. R.S. 33: 4724 and 4726 and the Acts reflecting the versions in effect in 1990 are attached hereto as Exhibit 8 for the convenience of the Court.

[3] In this Court's decision in *Save Our Wetlands v. St. John the Baptist Parish*, the Court noted that the Planning and Zoning Commission held not one, but two public hearings before recommending the rezoning as set forth in the Ordinance. *See* Exhibit 5 of Greenfield Motion for Summary Judgment at p. 145.

will know the amount of time allowed for the President to approve, disapprove or take no action so that the council will know if the Ordinance becomes effective, or if further action is needed by the council to override the veto. In this case, there is no dispute that the President signed the Ordinance, so the purpose underlying the requirement of the secretary's recordation of the time of delivery is moot.

Further, the failure to satisfy this ministerial duty does not serve as grounds to invalidate the Ordinance. State v. Thurston, 210 La. 797,803, 28 So.2d 274.

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."

Greenfield does not dispute this statement but does note that it relates only to authentication after the Ordinance has been approved and has nothing to do with the validity of the Ordinance.

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

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).

Greenfield disputes this statement, insofar as it is incomplete. The amendment referred to in Sec 113-76 is an amendment to the zoning regulations (which is not at issue in this case) or an amendment to the map, but not an amendment to the ordinance which proposes a zoning change.

Further, Greenfield notes that the minutes of the April 19, 1990, council meeting reflect that a public hearing was held after the amendment to Ordinance 90-27 was introduced.

Further, to the extent this ordinance is inconsistent with the provisions of the Home Rule Charter of St. John the Baptist Parish, the Home Rule Charter prevails. Art. IV, Sec. B(3)(d) provides "After all persons have been given the opportunity to be heard, the council may pass the ordinance ***with or without amendments*** *and the ordinance as finally adopted*

shall be published in full in the official parish journal within ten days after it is approved by the parish president as provided in section C hereof or recorded in the minutes of the council by the individual vote of each councilmember."

Finally, Plaintiffs ignore the later provisions of 113-78(8) of the Code of Ordinances, which provides in part "Any amendment that has failed to receive the approval of the planning commission shall not be passed by the parish council except by the affirmative vote of two-thirds of the legislative body." Ordinance 90-27 was passed with 8 yeas and 1 abstention, easily surpassing the two-thirds threshold.

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.

Greenfield adopts the same comment as set forth above.

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."

Greenfield adopts the same comment as set forth above.

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

Greenfield adopts the same comment as set forth above.

5. <u>All Zoning Changes Must Be Reflected on Official Zoning Map.</u>

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

Greenfield does not dispute that this language appears in the Code of Ordinances.

Additional Legal Elements Asserted by Greenfield

In addition to its Opposition to certain of Plaintiffs' listing of essential legal elements as outlined above, Greenfield asserts the following additional legal elements defeat Plaintiffs' Cross-Motion for Summary Judgment:

A. *The statutes providing the general authorization for Parishes to zone and procedures relating thereto are set forth in R.S. 33:4780.40 et seq. Those statutes were first enacted after the subject 1990 rezoning pursuant to Acts 1993, No. 201, eff. Jan 1, 1994, and would not be applicable to St. John the Baptist Parish. Further, they would not have affected the parish even if adopted prior to 1990, because R.S. 4780.50 provides that those general provisions do not apply to home rule charter jurisdictions.*

STATEMENT OF UNCONTESTED FACTS

Greenfield notes that Plaintiffs have not disputed any of the Uncontested Facts set forth by Greenfield in its Motion for Summary Judgment. In accordance with Rule 9.10 of the Uniform Rules for the District Courts, set forth below are the Additional Uncontested Facts set forth by Plaintiffs in their Cross-Motion for Summary Judgment, followed by Greenfield's response/opposition. For the convenience of the Court, Plaintiffs' assertions are in standard font with Greenfield's response in italics.

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.

   Greenfield disputes whether Ordinance was passed "shortly before 9:15 p.m.," but does not dispute the remainder of this fact.

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 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.

Greenfield disputes that any zones were unlawfully added at the last minute. Greenfield further disputes that the amendment required an additional public notice and separate hearing. The minutes reflect that public hearing was held following the amendment. Further, the Parish Charter specifically allows the council to pass an ordinance, following public hearing, with or without amendments. Art. IV, Sec. B(3)(d).

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.

Greenfield disputes this statement. There was no pre-existing ordinance in effect that established a 600-foot I-1 buffer between I-3 zoning and residential districts in the Parish. Ordinance 88-68 only amended the then-existing parish zoning map, not the text of the zoning regulations, and did not establish any buffer that applied to property zoned I-3 in the future.

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.

Greenfield disputes that there was a pre-existing ordinance in effect prior to April 19, 1990 that required establishing a 600-foot buffer between I-3 zoning and residential areas in the Parish. Ordinance 88-68 only amended the then-existing parish zoning map, not the text of the zoning regulations, and did not establish any buffer that applied to property zoned I-3 in the future.

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.

Greenfield does not dispute that the copy of the Ordinance attached to Plaintiffs' motion does not appear to contain the date of delivery of the Ordinance, but contends this fact is of no moment, since the President signed the Ordinance.

6) **<u>No Authentication.</u>** 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.

Greenfield disputes this statement. Plaintiff has offered no evidence as to when the Ordinance was first authenticated. Greenfield agrees that the copy of the Ordinance attached to Plaintiffs' motion does not appear to be authenticated.

Further, Authentication of an ordinance is not provided for in the Parish's procedures for enacting an ordinance (Art. IV, Sec. B of the Home Rule Charter), but is provided for in Art. IV, Sec. F of the Home Rule Charter.

7) **<u>Corruption Conviction.</u>** 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."

Greenfield disputes this statement, as nothing in the conviction or the Court's opinion supports the contention that his conviction was premised upon his promise to push through zoning. Millet was convicted for securing a real estate listing for his friend, who then paid part of the commission to Millet.

Further, Plaintiffs have not offered one scintilla of evidence that Millett ever influenced, or even attempted to influence, anyone on the council to vote in favor of the zoning ordinance.

<u>OPPOSITION TO PLAINTIFFS' SUMMARY JUDGMENT EVIDENCE</u>

In accordance with Code of Civil Procedure Art. 966(D)(2), Greenfield objects to the following summary judgment evidence offered by Plaintiffs :

Exhibit P-1: Ordinance 90-27. *No objection*

Exhibit P-2: Official Proceedings of the St. John the Baptist Parish Council, April 19,1990. *No objection*

Exhibit P-3: Ordinance 88-68. *Greenfield objects to this document in part. P-3 has multiple attachments. One is the prior Ordinance 88-68, which amends Ordinance 86-36, which adopted the Official Parish Zoning Map. Greenfield has no objection to this document, which is pages 1 and 2 of Exhibit P-3.*

The second attachment to Exhibit P-3 purports to be simply a darker and better copy of Ordinance 99-68, but it is not the ordinance itself, and it purports to be a modification of the Zoning Regulations of the parish, which is different than the map. This second attachment is not signed and is just typed on sheets of paper. In other words, the second part of Exhibit P-3 is not authenticated or adequately identified and is not simply a darker and better copy of Ordinance 88-68. In that regard, it appears to be rank hearsay.

Exhibit P-4: Certifications of Publication: Public Notices of Hearings on Rezoning Changes. *No objection.*

Exhibit P-5(a): Judgment and Conviction, *United States v. Millet,* Case No. 95-0187. *No objection to the conviction.*

Exhibit P-5(b): Appellate Opinion in *United States v. Millet,* 123 F.3d 268 (5th Cir. 1997). *Greenfield objects to an appellate opinion as summary judgment evidence, as it is not the type of limited evidence which Code of Civil Procedure art. 966 allows to be filed in support of or in opposition to a motion for summary judgment. Greenfield has no objection to the Court's review of this opinion just as it would any other opinion for its statements regarding the law, but it is not summary judgment evidence.*

Exhibit P-6: *Save Our Wetlands v. St. John the Baptist Parish,* 600 So.2d 790 (La. App. 5th Cir. 1992), *writ denied*, 604 So.2d 1005 (La. 1992). *Greenfield objects to an appellate opinion as summary judgment evidence, as it is not the type of limited evidence which Code of Civil Procedure art. 966 allows to be filed in support of or in opposition to a motion for summary judgment. Greenfield has no objection to the Court's review of this opinion just as it would any other opinion, but it is not summary judgment evidence.*

Exhibit P-7: Provisions of the St. John the Baptist Parish Code of Ordinances Relating to Zoning Amendments. *No objection.*

Additional Summary Judgment Evidence. *Greenfield objects to any additional summary judgment evidence. Although not specifically identified as summary judgment evidence or attached to their motion for summary judgment, Plaintiffs refer in footnote 30 to the Affidavit of S. Evans, which was annexed to Plaintiffs' Amended Petition and in footnote 31, refer to Exhibits W-AA, annexed to Plaintiffs' Second Amended Petition. Greenfield objects to this evidence for two reasons. As to the affidavit of Ms. Evans, it is not made upon personal knowledge and attempts to authenticate a photograph, but Ms. Evans has no knowledge*

whatsoever as to whether what she took a photograph of is actually an official copy of a zoning map. Exhibits W-AA are identified as follows:

Exhibits – Added to Second Amended Petition
W. 2006 Act of Sale, Formosa to Robert Brothers, w Map
X. Detail of Map showing Residential, R-1 zoning of Wallace Tract
Y. 2006 Act of Sale, Formosa to Whitney Heritage, w Subdivision Map
Z. Detail of Map 751 showing R-1/residential zoning of Wallace Tract
AA. Minutes of Administrative Meeting Discussing Map

These Exhibits do not fall within the specific listing of exhibits which Code of Civil Procedure art. 966 allows to be considered in summary judgment motions. Louisiana Code of Civil Procedure Article 966(A)(4) provides, in pertinent part, that "[t]he only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions." Unsworn, unauthenticated documents attached to a petition are not proper summary judgment evidence. Foundation Materials, Inc. v. Carrollton Mid-City Investors, LLC, 2009-0414 (La. App. 4 Cir. 8/26/09) 17 So.3d 513. These documents do not fall within the scope of that article.

Second, the exhibits are not actually attached to Plaintiffs' Motion for Summary Judgment or its Memorandum. As noted by the First Circuit in Huggins v Amtrust Ins. Co. of Kansas, Inc., 20-516 (La. App. 1 Cir 12/30/20), 319 So.3d 362, "[T]o the extent the Hugginses refer to other exhibits appearing in the record, i.e., USAA's summary judgment evidence, we note that we cannot consider those documents in reviewing the Hugginses' motion, because they were not specifically filed in support of or in opposition to the Hugginses' motion for summary judgment."

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.

In its Motion for Summary Judgment, Greenfield satisfied its burden to show an absence of factual support for one or more elements essential to Plaintiffs' claim. The burden thus shifts to Plaintiffs to show the existence of a genuine issue of material fact, but Plaintiffs made no attempt to dispute any of the facts established in Greenfield's motion. Moreover, as set forth more fully hereafter, Plaintiffs in their cross motion have not established any genuine issue of material fact, or legal basis to defeat Greenfield's motion. Thus, Greenfield is entitled to judgment dismissing the claims and demands of Plaintiffs with prejudice.

B. The Amendment to Ordinance 90-27 Does Not Render It Void

Plaintiffs begin their argument with the proposition that "*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.*" Since Plaintiffs never pled this theory, it is difficult to conceive how they believe that "it is not genuinely disputed." Suffice it to say, Greenfield does dispute this statement, as it is premised entirely on distorted factual and legal analysis.

Initially, Plaintiffs tell this Court that a public hearing was held, but the amendment was inserted after the ***final*** public hearing on the Ordinance and "moments" before the council voted to approve the Ordinance. This statement is simply not true. The minutes from that meeting and which are attached to Plaintiffs' motion show that while there was a public hearing prior to the meeting, there was an additional public hearing after the amendment was introduced. It was only after that second public hearing, following the amendment, that the Ordinance was voted on and approved.

Plaintiffs contend that the Council's amendment which added a 300-foot buffer zone to the Ordinance at the council meeting was unlawful and invalidated the Ordinance. Plaintiffs further contend that the failure to re-submit the Ordinance, as amended, to the planning commission violates both State law and the Parish charter, but Plaintiffs are wrong on both counts.

1. Plaintiffs' State Law Statutes Do Not Apply to St. John the Baptist Parish.

As to their claim that the process violated state law, Plaintiffs cite La. R.S. 33:4726(A) as

"prohibit[ing] ***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." In their statement of essential legal elements, Plaintiffs describe La. R.S. 33:4726(A) as "prohibit[ing] 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."[4]

Plaintiffs' incomplete citations to this statute appear to be intended to mislead this Court, as La. R.S. 33:4726 does not use the term "zoning authority." Further, although it does refer to the "local legislative body," that phrase is modified by the words that follow—"***of the municipality***." A full reading of the statute unequivocally establishes that it applies only to municipalities.

> § 4726. Zoning commission; recommendations; public hearing
> In order to avail itself of the powers conferred by R.S. 33:4721 through R.S. 33:4729 ***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. . . .
>
> Where a municipal planning commission exists it shall be the zoning commission.[5]

Plaintiffs conveniently refer to the legislative body as the *local* legislative body rather than the *municipal* legislative body as provided for in the statute. Plaintiffs paraphrase the portions of the statute relating to public hearings for the planning commission, and again conveniently leave out all references to the municipality La. R.S. 33:4726(A) simply has no

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[4] Plaintiffs do cite the entirety of the current version of 33:4726(A), but only at Footnote 9 of their memorandum. The version of 33:4726(A) in effect in 1990 varies slightly and is reflected in Acts 1948, No. 437, attached hereto within Exhibit 8.

[5] Emphasis added. The words in italics are those portions of the statutes omitted by Plaintiffs in their brief to distort the application of the statute.

application whatsoever to St. John the Baptist Parish and its passage of Ordinance 90-27.[6]

2. Plaintiffs Ignore Controlling Language from the Parish's Home Rule Charter and Code of Ordinances.

Plaintiffs' reliance on the Parish's Code of Ordinances is equally flawed. First, Plaintiffs cite the Court to Parish Ordinance 113-76 as support for the proposition that the Council cannot amend an Ordinance at the hearing and thereafter vote on that Ordinance. Plaintiffs contend that Ordinance 113-76 requires the entire procedure of submission to the zoning commission, notice and hearing, and approval of the amended proposal to start anew. The First Circuit rejected a virtually identical argument in *Residents of Highland Road, LLC v. Parish of East Baton Rouge, 2008-2542* (La. App. 1 Cir. 7/22/09), 2009 WL 2183146. Plaintiff argued that because the proposed zoning ordinance was verbally amended by one of the council members at the meeting, that the ordinance as amended must return to the planning commission for review before any vote could be held. The First Circuit rejected that argument:

> We disagree with RHR's contention that the Metro Council was required to resubmit the revised ordinances to the Planning Commission in this case. The Planning Commission had already reviewed the proposed changes in zoning on the property from A–1 to LC–1. ***Although the Metro Council made a revision to the original zoning ordinances at its September 26th meeting, the revised amendment did not affect the zoning reclassification issue already considered by the Planning Commission,*** i.e., the requested change in zoning classification from A–1 to LC–1. Rather, it merely added the condition that certain deed restrictions be filed. Given the nature of the revision, we do not believe it was of such magnitude that a resubmission to the Planning Commission was required under U.D.C. § 3.05 and Metro Plan § 10.05, or any other provision.

Id. at *9.

The same result should obtain here. The planning commission in this case approved the zoning change on the property from R-1 to I-3. Just as in *Highland Road*, the amendment did not affect the proposed zoning classification (I-3), but merely added a condition of a buffer within that zone intended to protect the very residents who now complain.

Further, similar to their references to state statutes which simply do not apply to St. John the Baptist Parish, Plaintiffs ignore other provisions of the Home Rule Charter and Code of Ordinances which eviscerate this argument. The Home Rule Charter specifically allows the council to amend an ordinance at the public hearing <u>without</u> sending it back to the zoning commission, or anyone else. Art. IV, Sec. B(3)(d) the Parish's Home Rule Charter provides as

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[6] Plaintiffs similarly cite La. R.S. 33:4724(b) and 33:4725 for their requirements of notice and a public hearing, but those provisions likewise apply only to municipalities.

follows:

> After all persons have been given the opportunity to be heard, the council may pass the ordinance ***with or without amendments*** and the ordinance as finally adopted shall be published in full in the official parish journal within ten days after it is approved by the parish president as provided in section C hereof or recorded in the minutes of the council by the individual vote of each councilmember.

To the extent any conflict exists between the Home Rule Charter and the Code of Ordinances, the former must prevail. "Just as the Constitution is the supreme law of the state, home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation. *Montgomery v. St. Tammany Parish Government*, 2017-1811 (La. 6/27/18) 319 So.3d 209, 217; *Miller v. Oubre*, 96-2022 (La. 10/15/96, 9–10), 682 So.2d 231, 236; *see also, Morial v. Council of City of New Orleans,* 413 So.2d. 185, 187 (La. App. 4th Cir. 1982) ("We conclude that local regulation is permissible if it is not in conflict with the Home Rule Charter or otherwise unconstitutional.").

Art. IV, Sec. B(3)(g) of the Home Rule Charter follows the above cited provision and contains some limitations on the scope of an amendment by providing "A proposed ordinance shall not be altered or amended during consideration to nullify its original purpose or to accomplish an object not consistent with its original purpose," but the addition of a 300-foot buffer did not nullify the original purpose of Ordinance 90-27 or accomplish any object not consistent with its original purpose. Indeed, the Home Rule Charter's provisions limiting the circumstances under which the council can amend an ordinance during consideration constitutes an express recognition of the council's authority to amend the Ordinance during the council meeting and public hearing, except as specifically limited by (B)(3)(g). Thus, the Council acted in accordance with the powers expressly provided under its Home Rule Charter, and the passage of the Ordinance was valid.

Finally, while Plaintiffs direct the Court to Ordinance 113-76 as purportedly prohibiting an amendment to an ordinance after it has been submitted to the planning commission, they once again fail to disclose to the Court pertinent regulations that contradict their argument. Ordinance 113-76 provides as follows:

> The provisions of this chapter, including the official zoning map, may be amended by the parish council on its own motion, or on recommendation of the planning commission, but 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. Before enacting an amendment to this chapter, the

> planning commission shall give public notice and hold a public hearing thereon as required herein.

Ordinance 113-78, labeled Procedure for Amendments to Zoning Map, limits this requirement of planning commission approval. That ordinance provides as follows:

> 8) *Action by the parish council.* The governing authority shall not take official action until the report of the planning commission is received. A final vote shall have been taken on the proposal by the parish council within 45 days after the report has been received from the planning commission. In the event that no final vote is taken the proposal shall be automatically approved. However, in the event that the 45-day deadline falls on a holiday or a meeting that has been canceled by the parish council, the 45-day deadline will be extended automatically to the next regular parish council meeting. ***Any amendment that has failed to receive the approval of the planning commission shall not be passed by the parish council except by the affirmative vote of two-thirds of the legislative body.***

While Greenfield contends that the council has the authority under the Home Rule Charter to pass any ordinance with or without amendments, Ordinance No. 113-78 makes it clear that as to changes to the zoning ordinances or zoning map, the council may adopt any amendment to a proposed zoning change without the approval of the zoning commission, so long as it has approval of two-thirds of the council. In this case, Ordinance 90-27, as amended, passed with eight yeas and one abstention, easily satisfying the two-thirds vote threshold.

Plaintiffs direct the Court to *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), but that case did not involve an amendment to a proposed ordinance, but rather numerous procedural defects with respect to the original ordinance itself and the untimely public notice of the ordinance. Similarly, Plaintiffs' reliance on *Talbert v. Planning Comm'n, City of Bogalusa,* 230 So.2d 920, 925 (La. Ct. App. 1970) is misplaced, as that case did not involve the amendment of a proposed ordinance, but rather a claim that the application for the change in zoning was erroneously made to the Planning Commission instead of the Zoning Commission of the City of Bogalusa. No such claim exists in this case.

C. Ordinance 90-27 Did Not Amend Any Existing 600-Foot Buffer

Plaintiffs contend that the amendment to the Ordinance not only amended the original ordinance as proposed, but also resulted in an amendment to the "pre-existing 600-foot buffer required between I-3 and residential zones on the Parish's official zoning map." Plaintiffs' analysis in this regard is flawed, as there was no pre-existing 600-foot buffer required under the parish's existing zoning regulations.

Plaintiffs argue that Ordinance 88-68, passed two years prior to 90-27, adopted the official zoning map for the Parish, and required 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." Plaintiffs then state that the amendment to Ordinance 90-27 adding the 300-foot I-1 buffer "*cut in half* the 600-foot *buffer"* established by Ordinance 88-68. Plaintiffs' analysis is fatally flawed, as they either misunderstand or misrepresent what the 1988 ordinance did.

Amendments to zoning ordinances involve either a modification of the text of the zoning regulations or a modification of the zoning map, which is commonly referred to as a re-zoning.[7] Act IV, Sec. A(4) of the Home Rule Charter draws the distinction between an ordinance modifying the official map versus modifying regulations. Ordinance 88-68 is a modification of the zoning map. It is apparent from the plain language of the ordinance that it did not effect any change in the text of the zoning regulations in effect at that time. The first sentence of the ordinance expressly provides that it is "An ordinance amending Ordinance 86-36 (adopting the Official St. John the Baptist Parish Zoning Map) to include the following modifications . . ." The ordinance includes several specific map changes and one parish wide map change that provides as follows:

> Parishwide: Where 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.

(Emphasis added). This provision effectively re-zoned a 600-hundred-foot strip in all ***existing*** Industrial 3 districts that abut a Residential 1 district as of the date of the adoption of the ordinance on July 28, 1988. This provision would not have applied, however, to the Greenfield property, because it was not zoned Industrial 3 in 1988. It was not re-zoned to I-3 until the adoption of Ordinance 90-27 in 1990. The Ordinance 88-68 re-zoning affected all property zoned Industrial 3 as of the date of the ordinance, but not parcels subsequently zoned I-3.

A text change rather than a map change would have been required to create a 600-foot buffer that would have affected future I-3 zones, and Ordinance 88-68 did not do that. Contrary to Plaintiffs' assertion, the text of the zoning regulations in effect at the time of the adoption of Ordinance 90-27 actually provided for the following with regard to buffers between I-3 and residential zones:

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[7] *See e.g.,* Sec.113-78 through 113-80 of the Code of Ordinances.

> **Sec. 113-409. - Buffer requirements.**
> Where an industrial district three (I-3) abuts an existing residential, rural (except industrial use), or commercial use or district, buffer zones shall be provided in the applicable abutting side or rear yard as follows:
>
> (1) A 100 percent sight-obscuring fence, a minimum of eight feet in height.
> (2) One large tree for each 15 feet of lot, depth or width to be put in place in the side and rear yards for the purpose of screening.[8]

Accordingly, there was no I-1 600-foot buffer requirement at the time of the adoption of Ordinance 90-27 as Plaintiffs suggest, and the amendment to add a 300-foot I-1 buffer provided more protection to neighboring residential districts than the parish's code would otherwise have required.[9]

D. Delivery and Authentication Do Not Invalidate the Ordinance

Plaintiffs contend that Ordinance 90-27 is void because the council secretary failed to record on the Ordinance or Resolution the date of its delivery and receipt to the parish President.[10] Art. IV, Sec. C(2) requires the council secretary to record on the ordinance or resolution the date of its delivery to and receipt from the parish president. The absence of this recordation is of no moment.

The ministerial act of failing to deliver the ordinance to the parish president does not invalidate the ordinance. The Louisiana Supreme Court long ago rejected the notion that the failure to satisfy a ministerial duty such as signing of an ordinance, even when required by law, serves to render an ordinance invalid:

> The record shows that ordinance No. 150 was incorporated in the official Ordinance Book of Union Parish; that it was regularly presented, adopted, and promulgated, as required by law. ***While it was the duty of the President to sign the same, such a duty is ministerial and the informality may be cured at any time and cannot affect the validity of the ordinance duly passed and published***.[11]

See also, State v. Pearson, 218 La. 236, 48 So.2d 908 (La. 1950): "In bill of exception No. 2 it is

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[8] Code 1988, § 33:76A.5.

[9] Even if the 1988 Ordinance had imposed a 600-foot buffer on future I-3 zoned properties, the Council has the authority to amend its own ordinances. 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. Art. IV, Sec. A(4) and (5); *see* Exhibit 6 of Greenfield Motion for Summary Judgment.

[10] Plaintiffs also assert an argument regarding the absence of authentication, but that issue was fully addressed in Greenfield's original memorandum in support of its motion for summary judgment.

[11] *State v. Thurston*, 210 La. 797, 803; 28 So.2d 274 (1946), *citing Board of Com'rs of Iowa Drainage Dist. No. 1 v. Wilkins Co*., 125 La. 127, 51 So. 91; *Bathurst v. Course et al*., 3 La. Ann. 260; *Fanchonette v. Grange,* 5 Rob. 510.

urged that the police jury ordinance is null, void and unconstitutional because it was not signed at the time of its passage by the president and secretary of the police jury. This question is identical to the one presented in the case of *State v. Thurston*, 210 La. 797, 28 So.2d 274, wherein this Court stated that the failure of the president to sign the ordinance did not effect its validity."

Further, Art. IV, Sec. C(2) is contained in the section of the Home Rule Charter that deals with *submission* of ordinances to the parish president. It is not contained under Section B, which addresses Enactment of an Ordinance. Section B(1) provides "Except as provided in section E hereof,[12] an ordinance shall be enacted only in the manner provided in this section." In other words, the ordinance is enacted by the council: "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."[13]

If the ordinance is approved by the president, or not disapproved by the president, it becomes effective as provided therein.[14] The purpose of delivery to the Parish President is only so that the council will know the amount of time allowed for the President to approve, disapprove or take no action on the ordinance, so that the council will know if the Ordinance becomes effective, or if further action is needed by the council to override the veto. In this case, there is no dispute that the President signed the Ordinance, so the purpose underlying the requirement of the secretary's recordation of the time of delivery is of no moment to the effectiveness of the Ordinance. The Ordinance was enacted by the council. The signature evidencing delivery was merely a ministerial act that did not affect its validity.

E. Plaintiffs Failed to Offer any Evidence Whatsoever of Corruption in the Passage of Ordinance 90-27

As the final argument in support of their cross motion, Plaintiffs return to the central theme of their petition--the corruption of the parish president, Lester Millet Jr. But the corruption of Mr. Millet has nothing to do with the proposal of or the passage of the Ordinance. Plaintiffs admit in their petition that it is the council, not the president, which exercises legislative authority: "Defendant ST. JOHN THE BAPTIST PARISH COUNCIL ("the Parish Council") is a duly elected body and governing authority of the Parish. ***The Parish***

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12 Section E deals with emergency ordinances.

13 Art. IV, Sec. B(3)(h); *see* Exhibit 6 of Greenfield Motion for Summary Judgment.

14 Art. IV, Sec. C(2); *see* Exhibit 6 of Greenfield Motion for Summary Judgment.

Council is vested with the authority to exercise all legislative power, including the enactment of zoning ordinances."[15] Thus, it is the burden of Plaintiffs to provide evidence which at least creates a material issue of fact regarding the council's corruption or the exercise of undue influence on the council, but Plaintiffs have failed to offer a shred of evidence that Mr. Millet's corruption had anything to do with the passage of this Ordinance or had any influence whatsoever on the council. The only fact that Plaintiffs cite in support of their corruption argument is the fact of Millet's conviction, but that conviction was not for influencing or attempting to influence the council in connection with the zoning of any property. Plaintiffs have not offered any testimony or affidavits Mr. Millett even attempted to influence the passage of the Ordinance, let alone that he was successful in doing so.

Plaintiffs contend "Allegations of fraud, corruption, or bad faith in zoning proceedings or enactments are accorded special consideration by the courts." But the time for allegations is past. In the context of summary judgment, this Court must consider facts, and plaintiffs have offered none. "Innuendo and baseless accusations that a genuine issue of material fact exists are insufficient to create such an issue."[16] Plaintiffs suggest that had the Louisiana Fifth Circuit "known then what is now in the record, this litigation would not be necessary." But there is nothing in the record establishing any fraud or corruption in the passage of the Ordinance.

Millet was convicted for violations of 18 U.S.C. §§ 2, 1951, 1952, and 1956, resulting from the misuse of his official position as Parish President of the St. John the Baptist Parish, Louisiana. The misuse of his public office, however, was in extorting and then accepting a portion of the real estate commission associated with the sale of the Whitney Plantation, not from influencing or even attempting to influence a zoning change. The only reference to zoning in the Fifth Circuit opinion affirming his conviction was Millet's promise to ***Formosa*** that if it purchased the Whitney Plantation for the rayon facility, he would use his authority to push through the needed rezoning. There is simply nothing in the Fifth Circuit's opinion, and Plaintiffs have presented no evidence whatsoever, that the process leading to the passage of Ordinance 90-27 was dishonest or corrupt.[17]

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[15] Second Amended Petition, Par.7; *see* Exhibit 1 of Greenfield Motion for Summary Judgment.

[16] *Bagwell v Quality Easel Company*, 53, 282 (La. App. 2 Cir. 11/18/20) 307 So.3d 354, 361.

[17] Further, the Fifth Circuit opinion is not "evidence," of anything, other than the fact of his conviction, and is not the type of summary judgment evidence permitted under the Code of Civil Procedure.

F. The "Other Maps" Do Not Create a Genuine Issue of Material Fact

Plaintiffs' final argument appears to be nothing more than a thinly veiled attempt to muddy the water, as it has nothing to do with the enactment of the Ordinance. The Plaintiffs refer to various other maps which are not attached to their summary judgment motion as "add[ing] to the serious concerns and questions surrounding the zoning process." Those maps, however, are not attached to Plaintiffs' motion and are not proper summary judgment evidence before the Court.[18] Further, even Plaintiffs concede that the maps do not invalidate an otherwise validly enacted ordinance. Nor could they, as all the maps to which Plaintiffs refer are maps dated long after the passage of Ordinance 90-27. The "other maps'' are not before this Court, but even if they were, they bear no relevance to the validity or Ordinance 90-27 and create no genuine issue of material fact.

CONCLUSION

The sole issue presented by Plaintiffs' Petition and First and Second Amended Petitions is whether Ordinance 90-27 is an absolute nullity. The Louisiana Supreme Court has described the burden of proving the invalidity of a rezoning ordinance as an "extraordinary" one. In this case, Plaintiffs have not even come close to satisfying that burden. In its motion for summary judgment, Greenfield so thoroughly dismantled Plaintiffs' alleged grounds for invalidity of the ordinance that Plaintiffs did not even attempt to dispute Greenfield's factual or legal analysis. Instead, Plaintiffs filed a cross-motion for summary judgment, relying on a new set of theories and arguments, primarily based on distorted, or simply inaccurate, reading of the statutes and ordinances they cite to the Court.

As set forth more fully in Greenfield's Motion for Summary Judgment and in its opposition to Plaintiffs' Cross Motion for Summary Judgment, Plaintiffs fail to establish the existence of any genuine issues of material fact in this case. Plaintiffs offer no evidence that the corruption of the former parish president had any impact upon the legislative actions of the parish council in passing Ordinance 90-27. Further, the Council complied with the provisions of the parish's Home Rule Charter and Code of Ordinances. Accordingly, Greenfield is entitled to judgment as a matter of law granting its own motion for summary judgment, denying the cross motion of Plaintiffs, and dismissing Plaintiffs' claims and demands with prejudice, at Plaintiffs' cost.

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[18] *See* Greenfield's objections to Plaintiffs' additional summary judgment evidence, *supra.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has this day been served upon all counsel of record by electronic mail properly addressed.

New Orleans, Louisiana, on this 25th day of April, 2023.