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, 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

WRITTEN REASONS FOR JUDGMENT

This matter came before the Court on the 11th day of May, 2023 pursuant to motions for summary judgment filed by Plaintiffs, Intervenor Greenfield Louisiana, LLC, and Defendants collectively known as the Parish (St. John the Baptist Parish, through its Parish President, Jaclyn Hotard, St. John the Baptist Parish Council, St. John the Baptist Parish Planning Commission, and St. John the Baptist Parish Department of Planning and Zoning).

Present: Pamela Spees, present with/for Plaintiffs

Samuel J. Accardo, Jr., present for the Parish

Paul Adkins, Louis Buatt, and Clare M. Bienvenu, present for Greenfield Louisiana, LLC

FACTUAL AND PROCEDURAL HISTORY

On April 19, 1990, the St. John the Baptist Parish Council voted unanimously, with one recusal, to enact Ordinance 90-27 in the following manner:

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[1]

[1] Plaintiffs' *Cross-Motion for Summary Judgment*, Exhibit P-1.

Immediately prior to voting on Ordinance 90-27's enactment, Councelman Haston Lewis introduced an amendment to Ordinance 90-27 that would place a 300-foot I-1 buffer wherever an I-3 district abuts and R-1.[2] The Parish Council voted in favor of amending Ordinance 90-27 and the voted in favor of enacted Ordinance 90-27 as amended.[3]

Plaintiffs filed suit on November 9, 2021, setting forth a plethora of factual allegations and focusing much of their argument on nullification of Ordinance 90-27 due to the corruption of Lester Millet. Plaintiffs rely on the United States Fifth Circuit's decision in *United States v. Millet*, 123 F.3d 268, (5th Cir. 1997), as proof of the factual allegations asserted. However, facts outlined in the United States Fifth Circuit's decision are not taken as true for purposes of this litigation. Simply put, no provision allows this Court to take judicial notice of a fact as asserted in a decision of another court. *See Sternberg v. Smith*, 385 So.2d 469 (La. App. 1 Cir. 1980); *Mattox v. American Indem. Co.*, 259 So.2d 79 (La. App. 4 Cir. 1972). Accordingly, it is not proper evidence to support factual assertions.

Greenfield filed its *Motion for Summary Judgment* on January 9, 2023. The Parish filed a *Motion for Summary Judgment* on February 13, 2023, setting forth arguments identical to those set forth by Greenfield. Finally, Plaintiffs filed their *Cross-Motion for Summary Judgment* on March 6, 2023. This Court held oral argument on May 11, 2023. During the hearing, the Court ruled on Greenfields objections to certain evidence presented with Plaintiffs' *Cross-Motion for Summary Judgment*. At the conclusion of the hearing, the Court took the matter under advisement.

LAW AND ANALYSIS

I. Summary Judgment Standard and Burden of Proof

"The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action." La. C.C.P. art. 966.A(2). "The procedure is favored and shall be construed to accomplish those ends." La. C.C.P. art. 966.A(2). "A party may move for a summary judgment for all or part of the relief for which he has prayed." La. C.C.P. art. 966.A(1). A plaintiff's

[2] Plaintiffs' *Cross-Motion for Summary Judgment*, Exhibit P-2.
[3] Plaintiffs' *Cross-Motion for Summary Judgment*, Exhibit P-2.

motion may be filed at any time after the answer has been filed. La. C.C.P. art. 966.A(1). A defendant may file the motion at any time. La. C.C.P. art. 966.A(1).

"A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966.A(3). "The burden of proof rests with the mover." La. C.C.P. art. 966.D(1). "[I]f the mover will not bear the burden of proof at trial on the issue that is before the court…, the mover's burden…require[s] him to …point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." La. C.C.P. art. 966.D(1). "The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law." La. C.C.P. art. 966.D(1).

Because there are cross-motions for summary judgment, "we will determine whether either party has established there are no genuine issues of material fact and it is entitled to judgment as a matter of law." *Duncan v. U.S.A.A. Ins. Co.*, 2006-363 (La. 11/29/06), 950 So.2d 544. In other words, summary judgment will be denied if there is (1) a genuine issue of fact and (2) it is material to the case. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512 (La. 7/5/94) (citing *Brown v. B & G Crane Services, Inc.*, 172 So.2d 708, 710 (La. App. 4 Cir. 1965)). "A genuine issue is a triable issue." *Id.* (citing *Toups v. Harkins*, 518 So.2d 1077, 1079 (La. App. 5 Cir. 1987)). "An issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. Summary judgment is the means for disposing of such meretricious disputes." *Id.* (citing W. Schwarzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465, 481 (1983)). "In determining whether an issue is 'genuine,' courts cannot consider the merits, make credibility determinations, evaluate testimony or weigh evidence." *Id.* "Formal allegations without substance should be closely scrutinized to determine if they truly do reveal genuine issues of fact." *Id.*

"A fact is 'material' when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery." *Id.* (citing *Penalber v. Blount*, 550 So.2d 577, 583 (La. 1989)). "Facts are material if they potentially insure or preclude recovery, affect a

litigant's ultimate success, or determine the outcome of the legal dispute." *Id.* (citing *South Louisiana Bank v. Williams*, 591 So.2d 375, 377 (La. App. 3 Cir. 1991), *writs denied*, 596 So.2d 211 (La. 1992)). "A 'material' fact is one that would matter on the trial on the merits. Any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of a trial on the merits." *Id.*

The presumption of validity attached to zoning ordinances is a well-established principle of law in Louisiana. *Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish*, 561 So.2d 482 (La. 4/30/1990). It applies to all zoning ordinances. Accordingly, the party attacking the validity of a zoning ordinance bears the burden of proving that it was an arbitrary and unreasonable exercise of authority. *Id.* Additionally, because zoning laws are in derogation of rights of private ownership, our courts have consistently required strict compliance with the statutory procedures regulating enactment of zoning laws, failure of which is fatal to the validity of the zoning ordinance. *Schmitt v. City of New Orleans*, 461 So.2d 574 (La. App. 4 Cir. 12/18/1984). Accordingly, for Plaintiffs claim to success, they must produce facts to prove that either the statutory procedures for Ordinance 90-27's enactment were not followed or that the result of the zoning decision was an arbitrary and unreasonable exercise of authority.

II. Zoning ordinance enactment procedure in effect at the time of Ordinance 90-27's enactment

St. John the Baptist Parish operates under a home rule charter in accordance with Article 6, Section 5 of the Constitution of the State of Louisiana of 1974. A home rule charter adopted under Article 6, Section 5 of the Louisiana Constitution "shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution." La. Const. Art. 6, § 5(E). Included in these powers is the exercise of police power which encompasses that governing body's authority to implement zoning regulations. See *Save our Neighborhoods v. St. John the Baptist Parish*, 592 So.2d 908 (La. App. 5 Cir. 13/30/1991).

"St. John the Baptist Parish first enacted a comprehensive zoning ordinance in 1983, promulgating an official zoning map in 1986. The ordinance sets out procedures for changing

zoning classifications that include notice and public hearings of the Zoning and Planning Commission and the Parish Council." *Id.* at 910. 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." § 113-76. An application to amend the official zoning map "shall be filed with [the] zoning regulatory administrator or [his] designee." § Sec. 113-78. "Each application shall be presented to the planning commission by the zoning regulatory administrator, or his designee, together with his recommendations on it. A report of the planning commission's recommendation and the zoning regulatory administrator or his designee recommendation shall be submitted to the parish council." § 113-78(7).

Once the parish council receives the report of the planning commission, a vote on the proposal is to take place within forty-five days. § 113-78(8). The parish council must, however, abide by its own provisions regarding enactment of an ordinance. After an ordinance is introduced at a regular or special meeting, and unless it has been rejected at the same meeting by majority-vote of council members, "the council shall cause the ordinance, or a summary thereof to be published in the official journal at least once, together with a notice of the date, time and place, when and where it will be given a public hearing and be considered for final passage." Art. IV, § B. Once all interested persons have been given an opportunity to be heard at the time and place so advertised, "the council may pass the ordinance with or without amendments." Art. IV, § B(3)(d).

Nevertheless, the Section B(3)(d) must also be considered in conjunction with the zoning-specific condition that "*no amendment [to the official zoning 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.*" § 113-76 (emphasis added). Accordingly, while the parish council may amend a proposed ordinance prior to enactment so long as the amendment does not "nullify its original purpose or…accomplish an object not consistent with its original purpose," if the amendment makes a change to the official zoning map and it was not considered by the planning commission, the amendment is without effect.. Art. IV, § B(3)(g); § 113-76. Any interpretation to the contrary would circumvent the clear requirement that the planning commission review all proposals concerning zoning and submit its report to the parish council.

This is not to say that the planning commission's approval is required. "Any amendment [to the official map] 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." § 113-78(8). What is unequivocally required, however, is that all proposed amendments to the official zoning map be submitted to the planning commission for review and recommendation. § 113-78. Consequently, any amendment to a proposed zoning ordinance which has not first been submitted to the planning commission is without effect. § 113-76.

III. The amendment's effect on the validity of Ordinance 90-27

To determine whether an amendment to a proposed zoning ordinance has already been submitted to the planning commission as required, courts have sought to determine whether "the substance of the amendment in its scope and content" had been previously considered by the planning commission. *Faubourg Marigny Imp. Ass'n Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606 (stating that the proper analysis where an amendment to an ordinance occurs after the zoning ordinance has already been considered by the planning commission is whether the substance of the amendment in its scope and content had not been previously acted upon by the Planning Commission); *Residents of Highland Road, LLC v. Parish of East Baton Rouge*, 2008-2542 (La. App. 1 Cir. 7/22/09), 2009 WL 2183146 (finding in part that the revised amendment to the zoning ordinance did not affect the zoning classification issue already considered by the Planning Commission, i.e., the requested change in zoning classification from A-1 to LC-1). Indeed, an amendment to a proposed zoning ordinance introduced after the planning commission's review may have already been considered by the planning commission if the amendment is relatively insubstantial.

The Council's April 19, 1990, minutes illustrate that Councilman Lewis' amendment was added to Ordinance 90-27 without being formally submitted to the planning commission for review and recommendation.[4] "[N]o amendment [to the official zoning 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." § 113-76. This allows the planning commission to fulfill its duty to

[4] Plaintiffs' *Cross-Motion for Summary Judgment*, Exhibit P-2.

"review and take action upon each application." § 113-78(7). Additionally, it allows the planning commission to determine whether the proposed amendment to the official map would result in-part in "[l]and or building usage that is, or may become incompatible with existing character or usage of the neighborhood." § 113-79(a)(2)(c). The legal effect of a parish council's failure to submit a last-minute zoning amendment to the planning commission is a legal issue yet to be considered in this jurisdiction. However, other Louisiana courts have spoken on this issue.

In *Faubourg Marigney Improvement Association, Inc. v. City of New Orleans*, a neighborhood association brought an action against the city to declare the city council's adoption of the mayor's amendment to a zoning ordinance invalid and to permanently enjoin its implementation. 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606. In its analysis, the Fourth Circuit sought to provide guidance to the district court for its impending determination of whether an amendment to an ordinance must be submitted to the planning commission.. The facts leading to initiation of the suit are as follows. In 2010, New Orleans began the process of drafting a new Comprehensive Zoning Ordinance (CZO). The City's Municipal Code tasked the Planning Commission with preparing a twenty-year Master Plan. The Municipal Code further called upon the Planning Commission to commence work on a new CZO that was to be consistent with the new Master Plan.

The Planning Commission released its initial draft on the new CZO in September 2011. The commission then released a second draft in September 2013 and a third draft in July 2014. The City Council passed motion M-14-314 on July 24, 2014, which formally asked the City Planning Commission for an analysis of, and recommendations regarding, the amendment of the entire CZO. The City Planning Commission then subjected the July 2014 draft to a series of formal public hearings. After these hearings, the City Planning Commission altered some aspects of the plan. This final draft was transmitted to the City Council.

On March 16, 2015, the City Council publicly posted several so-called amendments to the CZO as recommended by the Commission, which amendments were proposed by then-Mayor Mitch Landrieu and later aggregated into an amendment designated MJL-6. On May 14, 2015, the City Council entertained public comment on the new CZO. At the close of the session, the City Council adopted the new ordinance as amended by MJL-6. In filing suit, the Improvement

Association alleged that the city failed to refer that portion of its new CZO which is derived from ordinance amendment MJL-6 to the City Planning Commission for prior review-and-recommendation before adopting the amendment. The Improvement Association sought a judgment declaring that the portion of the CZO attributable to MJL-6 is null and void. The Fourth Circuit found that that the city council was obligated by statute and ordinance to first refer MJL-6 to the Planning Commission for consideration before it could be acted upon by the City Council *if the substance of the amendment in its scope and content had not been previously acted upon by the Planning Commission. Fauberg*, 2015-1318 at p. 29-30, 195 So.3d at 623 (citing La. R.S. 33:4724 and 33:4725) (emphasis added). In determining that this is the appropriate analysis, the Fourth Circuit recognized that that portion of the Municipal Code which "affords the council the power to amend a pending zoning ordinance without first referring it to the Planning Commission provided that the amendment is germane to the ordinance's original purpose" "neither supersedes nor obviates the very clear procedural restrictions embedded within sections 4724 and 4725 of Title 33 of the revised statutes," as well as other relevant portions of the Municipal Code specific to zoning ordinances. *Fauberg*, 2015-1318 at 28-29, 195 So.3d at 622-623.

The First Circuit answered a similar question in *Residents of Highland Road, LLC v. Parish of East Baton Rouge*. 2008-2542 (La. App. 1 Cir. 7/22/09), 2009 WL 2183146. There, America Homeland, LLC owned two tracts of undeveloped property in Baton Rouge. In March 2006, applications were filed on its behalf requesting that both pieces of property be rezoned from A-1 (single family residential) to LC-1 (light commercial one). The planning commission recommended that the applications be denied on the basis that the rezoning failed to comply with the Horizon Plan and with the "adjacent land use character." *Residents*, 2008-2542 at p. 1.

America Homeland appealed the planning commission's decision to the Metro Council which held a public hearing on the matter at its September 6, 2006, zoning meeting. After hearing from several residents, the Metro Council deferred the matter to the next rezoning meeting. In the second meeting, a motion was made before the Metro Council to deny the rezoning. The ensuing discussion raised the possibility of limiting access to the property from Highland Road. Councilman Ulysses Addison made a substitute motion to approve the rezoning request with the stipulations that: (1) the deed restrictions mentioned in America Homeland's letter that limited the

permitted usages of the property be recorded; and (2) that there be limited access off of Highland Road. The Council discussed further and the chairman instructed the council administrator to repeat the motion to be voted on. The administrator repeated only that portion of Councilman Addision's motion that called for the recordation of certain deed restrictions. The Council then voted to approve the zoning ordinance over the planning commission's denial with a two-thirds vote.

Residents of Highland Road, LLC filed suit arguing in part that Councilman Addison's substitute motion substantially amended the proposed ordinances that were previously submitted to the Planning Commission to the extent that the Metro Council was required to resubmit the amended ordinances for the Planning Commission's review before voting on the matter. The First Circuit held that the revised amendment did not affect the zoning reclassification 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, the First Circuit did "not believe it was of such magnitude that a resubmission to the Planning Commission was required under U.D.C. § 4.05 and Metro Plan § 10.05, or any other provision. The proposed zoning classification had already been reviewed and rejected by the planning commission." *Id.*

Both of the aforementioned cases involved ordinances that rezone property which had been considered by the planning commission. However, after receiving the planning commission's recommendation, the councils amended the zoning ordinance in some way prior to enactment without first submitting the amendment to the planning commission for review and recommendation. Both Courts analyzed whether the ordinance was required to be resubmitted to the planning commission by determining whether the amendment's substance had previously been considered by the planning commission.

Greenfield argues that a result similar to that in *Residents* should hold here.[5] However, the Court in *Residents* held that the amendment did not affect the zoning classification already considered. *Residents, supra* at 9. In fact, the amendment did not change a zoning classification at

[5] Greenfield's *Memorandum in Opposition to Plaintiffs' Cross Motion for Summary Judgment and Reply Memorandum in Support of Greenfield's Motion for Summary Judgment*, p. 14

all. It only required that certain deed restrictions be filed. Conversely, the amendment to Ordinance 90-27 rezoned land that would have been zoned I-3 under Ordinance 90-27's original version as I-1.[6]

A material fact is one that potentially insures or prevents recovery, affects a litigant's ultimate success, or determines the outcome of a lawsuit. *Roux v. Toyota Material Handling, U.S.A., Inc.*, 19-75 (La. App. 5 Cit. 10/23/19), 283 So.3d 1068. A material fact in this case is one that would show that the amendment needed to be consider by the planning commission, but was not considered as required. An issue is genuine if it is such that reasonable persons could disagree. *Id.* The amendment to Ordinance 90-27 certainly affected a zoning classification. Because Ordinance 90-27's amendment was first submitted for consideration immediately prior to voting on its enactment, reasonable persons could not disagree that the amendment was not considered. Further, after an adequate time for discovery, neither Greenfield nor the Parish has rebutted Plaintiffs evidence with evidence showing that the planning commission considered the feasibility of the I-1 buffer and submitted its report and recommendation to the council. La. C.C.P. art. 966(A)(3). Accordingly, Plaintiffs have pointed to this Court the absence of a genuine issue of material fact and have shown that they are entitled to judgment as a matter of law on this ground.

IV. Council secretary's alleged failure to record and authenticate

The Parish's Home Rule Charter provides that the "council secretary shall record upon the ordinance or resolution the date of its delivery to and receipt from the parish president." Art. IV, § C(2). Furthermore, the Home Rule Charter provides that 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." Art. IV, § F(1). Plaintiffs argue that the council secretary's failure to record dates upon the ordinance and authenticate the ordinance by his signature render Ordinance 90-27 null and void *ab initio*. Plaintiffs assert that these provisions are crucial in determining whether the ordinance is null and void *ab initio* because they are "intended as layers of protection and checks and balances to ensure that the zoning process is thorough, and fully transparent and

[6] Plaintiffs' *Cross-Motion for Summary Judgment*, Exhibit P-1.

accountable, in recognition of the property rights, health and safety or residents at stake in any zoning decision."[7]

Louisiana courts have required strict compliance with the statutory procedures regulating *enactment* of zoning laws. *Schmitt v. City of New Orleans*, 461 So.2d 574 (La. App. 4 Cir. 12/18/84) (internal citations omitted) (emphasis added). The Parish's Home Rule Charter provides that "an ordinance shall be *enacted* only in the manner provided in this section." Art. IV, § B(1) (emphasis added). Accordingly, failure to comply with sections outside of Section B have no effect on the validity of an ordinance. Further, they do not provide zoning-specific conditions as found above. Accordingly, they have no bearing on the validity of a zoning ordinance.

Section F provides for the organization and distribution of ordinances and resolutions which already have the force and effect of law. It states:

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

Art. IV, § F(1) and (2). The council secretary's alleged failure to authenticate Ordinance 90-27 cannot act to invalidate the ordinance as this section applies to ordinances and resolutions that have completed the legislative process. Accordingly, the provisions of Section F do not act as layers of protection and checks and balances. Should the council secretary fail to complete this duty, the appropriate relief is through mandamus to order the secretary to complete this task. La. C.C.P. art. 3863 (A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law). Greenfield and the Parish have successfully pointed out to the court an absence of factual support for this claim. There exists no genuine issue of material fact on this issue. Because this section has no bearing on the validity of an ordinance otherwise validly enacted, Greenfield and the Parish are entitled to summary judgment as a matter of law on this

[7] Plaintiffs' *Cross-Motion for Summary Judgment*, p. 14.

ground. However, because Ordinance 90-27 has been invalidated due to the failure to submit its amendment to the planning commission, this matter is moot.

Likewise, the council secretary's alleged failure to comply with Section C does not act to invalidate Ordinance 90-27. Section C is entitled "Submission of ordinances and resolutions to the parish president." Plaintiffs argue that the council secretary's failure to "record upon the ordinance or resolution the date of its delivery to and receipt from the parish president" acts to render Ordinance 90-27 null and void *ab initio*. Art. IV, § C(2). Section C states:

> *The parish president, within ten days* of the adoption of an ordinance or resolution, *shall return it to the council secretary with or without his approval, or with his disapproval.* If the ordinance or resolution has been approved, or is not specifically disapproved, it shall become effective as provided therein, or if not provided therein, on the fifth day following its publication in the official Parish Journal; if the ordinance or resolution is disapproved, the parish president shall submit to the parish council through the council secretary a written statement of the reasons for his veto. The council secretary shall record upon the ordinance or resolution the date of its delivery to and receipt from the parish president. (emphasis added).

When the council secretary records these dates upon the ordinance or resolution, the relevant parties are informed as to whether the parish president has complied with his time limitation for returning the ordinance or resolution to the council secretary "with or without his approval, or with his disapproval." Art. IV, § C(2). This provision is simply not related to *enactment* of an ordinance. It is in relation to the delay placed on the parish president.

Accordingly, the council secretary's failure to record the date of delivery to and receipt from the parish president cannot act to render Ordinance 90-27 null and void *ab initio*. Finding for Plaintiffs on this issue would essentially render the council secretary—a public employee not subject to election—to be a vital member of the legislative process as his action or inaction could affect the validity of ordinances and resolutions lawfully enacted by the parish council. For our current purposes, the Court has been presented with a motions for summary judgment. On this issue, Greenfield and the Parish have shown that no genuine issue of material fact exists. Because the council secretary's failure to record dates upon the ordinance is not a legal ground to invalidate Ordinance 90-27, Greenfield and the Parish are entitled to judgment as a matter of law on this issue. However, because Ordinance 90-27 has been invalidated due to the failure to submit its amendment to the planning commission, this matter is moot.

V. Missing survey map and conflicting zoning maps

Plaintiffs allege in their petition that "[t]he original survey map upon which the rezoning designations in Ordinance 90-27 [are based] was mysteriously torn from the official records in the Clerk of Court."[8] That a survey map was torn from official records is an allegation not taken lightly by this Court. However, Plaintiffs point to no authority that would allow an otherwise validly-enacted ordinance to be rendered null and void *ab initio* due to alleged theft or nefarious activity that may have occurred in the Parish's official records.

Plaintiffs also allege that "[t]he Parish's current zoning maps conflict with each other as to the exact status of zoning of the Wallace tract and none of them comply with the Parish Code's requirements for official maps."[9] The Parish's Land Development Regulations provide that:

> Regardless of the existence of purported copies of all or part of the official zoning map which may from time to time be made or published, 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.

§ 113-143(b)(2). Plaintiffs fail to elaborate on *how* the official map does not comply with the Parish Code's requirements for official maps. However, the failure of the official map to comply with validly enacted ordinances does not render an ordinance changing one aspect of the map null and void *ab initio*. Notably, Plaintiffs admit that "the maps in and of themselves may not invalidate an otherwise validly enacted ordinance."[10] Greenfield and the Parish have shown that there exists no genuine issue of material fact and they are entitled to judgment as a matter of law. However, because Ordinance 90-27 has been invalidated due to the failure to submit its amendment to the planning commission, this matter is moot.

a. Corruption of the Parish President

Louisiana's ethical standards for public servants provide that:

> *No public servant shall solicit or receive any thing of economic value,* directly or indirectly, for, or to be used by him or a member of his immediate family principally *to aid in*, (1) *the accomplishment* of the passage or defeat of any matter affecting his agency by the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision, *or* (2) *the influencing*, directly or indirectly, of the passage or defeat of any matter affecting his agency by

[8] Greenfield's *Motion for Summary Judgment*, Exhibit 7, ¶ 209.
[9] Greenfield's *Motion for Summary Judgment*, Exhibit 7, ¶ 211.
[10] Plaintiffs' *Cross-Motion for Summary Judgment*, p. 18

> the legislature, if his agency is a state agency, or by the governing authority, if his agency is an agency of a political subdivision.

La. R.S. 42:1118 (emphasis added). Plaintiffs argue that "Ordinance 90-27 was the product of, and instrumental to, an illegal scheme by the Parish President to commit extortion, money laundering, and abuse of power."[11] Indeed, "when there is room for two opinions, action is not arbitrary of 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). Likewise, in the absence of fraud, "the authority of the courts in [zoning decisions] 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 (a. 1992).

While Lester Millet's corruption regarding certain acts has been proven in other courts, Plaintiffs have failed to produce a fact in this court showing that Millet's fraudulent acts extended to the rezoning of the property. Plaintiff's list of uncontested material facts asserts the following:

> 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."[12]

While the United States Fifth Circuit found that Millet promised Formosa that he would push through the needed rezoning, there has simply been no evidence submitted to this Court by the Plaintiffs proving any factual allegation regarding Lester Millet. A decision from another jurisdiction is not proper to prove a factual assertion. The evidence shows that a study was made to determine the feasibility of the proposed rezoning to facilitate Formosa's plans "[a]t the request of N. Boudoin, Representative of District 1."[13]

An amendment to the official zoning map may be initiated by: (1) action of the parish council itself; (2) on petition of at least 51 percent of the property owners, or their authorized agents; or (3) upon the recommendation of the planning commission. § 113-77. Under the parish's code of ordinances, the parish president is not authorized to initiate an amendment to the official

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[11] Plaintiffs' *Cross-motion for Summary Judgment*, p. 18.
[12] Plaintiffs' *Cross-motion for Summary Judgment*, p. 4 (citing *United States v. Millet*, 123 F.3d 268, (5th Cir. 1997).
[13] Greenfield's *Motion for Summary Judgment*, Exhibit 7.

zoning map. And Plaintiffs have presented no evidence that Millet conspired with a party who is authorized to initiate the amendment in order to further any curruption. Evidence of such is critical to Plaintiffs theory of the case. Despite ample opportunity for discovery, evidence of such a nature has not been produced. La. C.C.P. art. 966(A)(3).

Once the mover makes a *prima facie* showing that the motion should be granted, the burden shifts to the non-moving party to present evidence demonstrating that a material factual issue remains. *Phipps v. Schuppi,* 2009-2037 (La. 7/6/10), 45 So.3d 593. A material fact on this issue is one that would show that Millet obtained anything of economic value, directly or indirectly, to aid in the accomplishment or the influencing the enactment of Ordinance 90-27. La. R.S. 42:1118. After adequate time for discovery, Plaintiffs have been unable to produce such a fact. La. C.C.P. art. 966(a)(3). Greenfield and the Parish have shown that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. However, because Ordinance 90-27 has been invalidated due to the failure to submit its amendment to the planning commission, this matter is moot.

VI. Remaining claims for invalidation of Ordinance 90-27

An addition to the claims above, Plaintiffs also assert that residents of Wallace, neighboring historic and cultural sites, and Lac de Allemands face potential threat from a new heavy industrial facility seeking to locate on the Wallace tract.[14] Plaintiffs further argue that Wallace residents have repeatedly asked the Parish Council to address their concerns about the zoning designation of the Wallace tract and the proposed facility to no avail.[15] A reading of Plaintiffs' *Second Amended Petition* left this Court uncertain as to whether Plaintiffs intended to use these allegations as ground for declaring Ordinance 90-27 an absolute nullity as these allegations fall outside Section V of Plaintiffs' Petition regarding why Ordinance 90-27 is an absolute nullity.

Nevertheless, while these grounds could fall under arbitrary and capricious grounds, Plaintiffs fail to make such a showing. Additionally, the rezoning of this exact piece of land has already been determined to not have been arbitrary and capricious. *Save Our Wetlands, Inc., v. St.*

[14] Greenfield's *Motion for Summary Judgment*, Exhibit 7, p. 27.
[15] Greenfield's *Motion for Summary Judgment*, Exhibit 7, p. 35.

John the Baptist Parish, 600 So.2d 790 (La. App. 5 Cir. 1992). Further, as the Louisiana Supreme Court stated in *Palermo*:

> Zoning ordinances generally result from a rational decision-making process, and input from members of the community is not uncommon. Nor should it be. Those with zoning authority are elected officials, and as such, they represent the interests of those who elected them. The interests of the public are at the heart of the welfare of a community. Thus the concerns and desires of the electorate are an appropriate consideration in the decision-making process which exists for their benefit. As this court pointed out in *Civello, supra,* if a majority of the citizens are dissatisfied with the decisions of the zoning authority, "their recourse is to the ballot—not to the courts."

Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish, 561 So.2d 482 (La. 1990) (citing *State ex rel. Civello*, 154 La. 271, 97 So. 440 (1923). Greenfield and the Parish have shown that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law on these grounds. However, because Ordinance 90-27 has been invalidated due to the failure to submit its amendment to the planning commission, these issues are moot.

CONCLUSION

In summarizing the judgment above, the Court grants summary judgment to Plaintiffs and declares Ordinance 90-27 null and void *ab initio* due to the council's failure to submit Councilman Lewis' amendment, which changed the zoning classification considered by the planning commission, to the planning commission for review and recommendation prior to enactment. Notably, Plaintiffs request a plethora of relief. However, the relief granted is limited to a declaration that Ordinance 90-27 is null and void *ab initio*.

Judgment signed on the 4 day of Aug, 2023 in Edgard, Louisiana.

J. Sterling Snowdy

Judge, Fortieth Judicial District Court

PLEASE NOTIFY ALL PARTIES