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August 15, 2023

The Honorable Eliana DeFrancesch
Clerk of Court, St. John the Baptist Parish
P.O. Box 280
Edgard, Louisiana 70049

RE: The Descendants Project, Jocyntia Banner and Joyceia Banner vs. St. John The Baptist Parish through its Chief Executive Officer, 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, through its Director, Rene Pastorek
Suit #77-305C, 40th JDC
Our File #1135.37-S-21

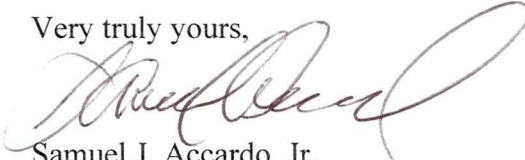
Dear Ms. DeFrancesch:

Enclosed please find an original and two copies of Defendant, St. John the Baptist Parish, Motion and Order for New Trial and the Memorandum in Support for same, which I am filing with the court on behalf of the defendant, St. John The Baptist Parish, in the above captioned matter. Please return a conformed copy thereof to me in the enclosed self addressed stamped envelope. Please have service made on the Plaintiff through her counsel of record.

Thanking you in advance for your cooperation.

With kindest personal regards, I am

Very truly yours,



Samuel J. Accardo, Jr.

SJA:drr
Enclosures

cc: Pamela C. Spees, Esq., via email only
William P. Quigley, Esq., via email only
Louis E. Buatt, Esq., via email only

THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER

40TH JUDICIAL DISTRICT COURT

VS.

PARISH OF ST. JOHN THE BAPTIST

ST. JOHN THE BAPTIST PARISH; ST JOHN
THE BAPTIST PARISH COUNCIL; ST. JOHN
THE BAPTIST PARISH PLANNING
COMMISSION; and ST. JOHN THE BAPTIST
PARISH DEPARTMENT OF PLANNING AND
ZONING

STATE OF LOUISIANA

DOCKET NO.: 77-305

DIVISION "C"

FILED: _____

DY.CLK.: _____

MOTION AND ORER FOR NEW TRIAL

On motion of St. John The Baptist Parish ("SJB"), Defendant and Mover herein, through undersigned counsel, on suggesting to the Court that a new trial should be granted in this matter on the grounds that the judgment is contrary to the law and the evidence, as shown by the Memorandum in Support of Motion for New Trial of Mover filed herewith.

IT IS ORDERED that Plaintiffs: Descendants Project, Jocyntia Banner, and Joyceia Banner, show cause on the _____ day of _____, 2023 at _____ o'clock ____m. in the St. John the Baptist Parish Courthouse, Edgard, Louisiana, why St. John The Baptist Parish ("SJB") should not be granted a new trial.

Signed in Edgard, Louisiana, this _____ day of _____, 2023.

DISTRICT JUDGE

RESPECTFULLY SUBMITTED:

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Attorneys for Mover:
St. John The Baptist Parish ("SJB")

By: 
SAMUEL J. ACCARDO, JR.
La. Bar Roll #24007

CERTIFICATE OF SERVICE
I, hereby certify that I have served the above and foregoing documents by facsimile transmission, hand delivery, Certified Mail Return Receipt Requested, UPS/Federal Express, Electronic Mail, and/or by U.S. Mail, First Class, postage prepaid, properly addressed to all counsel of record on this 15th day of August, 2023.

SAMUEL J. ACCARDO, JR.

PLEASE SEE SERVICE INSTRUCTIONS ON NEXT PAGE:

THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER

40TH JUDICIAL DISTRICT COURT

VS.

PARISH OF ST. JOHN THE BAPTIST

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THE BAPTIST PARISH COUNCIL; ST. JOHN
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COMMISSION; and ST. JOHN THE BAPTIST
PARISH DEPARTMENT OF PLANNING AND
ZONING

STATE OF LOUISIANA

DOCKET NO.: 77-305

DIVISION "C"

FILED: _____

DY.CLK.: _____

SERVICE INSTRUCTIONS

PLEASE SERVE:

**PLAINTIFFS: Descendants Project,
Jocyntia Banner, and Joyceia Banner**
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PLEASE NOTIFY:

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

NO. 77-305

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 SUPPORT OF ST. JOHN THE BAPTIST PARISH’S
MOTION FOR NEW TRIAL

St. John The Baptist Parish (“SJB”) respectfully submits this memorandum in support of its motion for new trial and/or for reconsideration of the Court’s Judgment of August 4, 2023 which granted the summary judgment motion of Plaintiffs: Descendants Project, Jocyntia Banner, and Joyceia Banner (“Plaintiffs”) and denied the summary judgment motions of St. John the Baptist Parish and Greenfield.

I. BRIEF FACTS, PROCEDURAL HISTORY, and SJB’S POSITION

On April 19, 1990, Ordinance 90-27 was adopted by the St. John the Baptist Parish Council (the “Parish Council”) by a unanimous vote of eight (8) yeas to zero (0) nays with one recusal. Ordinance 90-27 provided for the rezoning of certain tracts of land from R-1, single family residential, to I-3, an industrial zoning district. An amendment (herein the “Amendment”) was proposed and approved during the above April 19th meeting. The Amendment provided that wherever an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1. Greenfield purchased the property nearly 31 years later for Forty Million Dollars with the intent to build a grain elevator storage facility. Greenfield later sold the subject property herein to the Port of South Louisiana and now leases the property from the Port.

On November 9, 2021, Plaintiffs in this case filed a Petition for Writ of Mandamus. Plaintiffs further filed two amended petitions subsequent thereto. The Plaintiffs and Defendants

filed cross motions for summary judgment. On August 4, 2023, this Court issued Judgment with Written Reasons for Judgment.

SJBP respectfully submits that it's motion for new trial should be granted based on the following:

Respectfully, this Honorable Court failed to interpret and apply the applicable provisions of the St. John the Baptist Home Rule Charter and Code of Ordinances to the specific facts and circumstances in this case. Those provisions are conflicting. Rather than trying to harmonize them, the District Court should have found that the Home Rule Charter provisions which address the amendment of ordinances take precedent over all other provisions in the Parish Code of Ordinances.

In the alternative, SJBP motions for the Court's reconsideration of its judgment declaring Ordinance 90-27 entirely null and void due to the Parish Council's failure to submit the Amendment to the Planning Commission for review and recommendation. SJBP request that this Court revise its judgment by severing the Amendment from Ordinance 90-27 and allowing the remainder of Ordinance 90-27 to stand.¹

II. MOTION FOR NEW TRIAL STANDARD

A new trial must be granted when, *inter alia*, "the . . . judgment appears clearly contrary to the law and the evidence." *La. C.C.P. Art. 1972*. In accordance with *La. C.C.P Art. 1973*, the Court has discretion to order a new trial "if there is good ground therefor." Art. 1973 further provides that a district court may use its discretion to order a new trial whenever the Court is 'convinced by its examination of the facts that the judgment would result in a miscarriage of justice.'" *Lamb v. Lamb*, 430 So. 2d 51, 53 (La. 1983)). The discretion of the Courts is virtually unlimited and the district judge need only state an articulable reason or reasons as to why he is exercising his discretionary powers. A trial judge has broad discretion in the granting or denying of a Motion for New Trial." *Jackson v. Bally's Louisiana, Inc.*, 2009-1574 (La. App. 4 Cir. 4/7/10), 36 So. 3d 1001, 1004.

SJBP respectfully avers that the Court's ruling is contrary to law and evidence. This Court has the authority to, and should, grant SJBP's motion for good cause herein. Further, good cause exist for the Court to avoid a miscarriage of justice and reconsider its judgment based on SJBP and

¹ SJBP does not admit that any procedural defects exist in the Amendment and hereby affirms that Amendment and Ordinance 90-27 was, and is, valid.

Greenfield's alternative arguments regarding severability of the ordinance and amendment .

III. LAW AND ARGUMENT

A. SJBP's Code Of Ordinances Versus Home Rule Charter

This Honorable Court should have recognized and held that the SJBP Home Rule Charter takes full legal precedent over the SJBP Code of Ordinances. Louisiana jurisprudence is clear that home rule charters are the supreme law of home rule jurisdictions and are only subordinate to the constitution and constitutionally allowed legislation. The Courts have held: "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." Our Courts have further held that local regulation is permissible if it is not in conflict with the Home Rule Charter or otherwise unconstitutional. *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):

Art. IV (B)(3)(d) of the SJBP Home Rule Charter specifically provides that the council may amend an ordinance at public hearing without a requirement that it be returned back to the zoning commission:

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.²

This Honorable Court recognized the above noted provision, but found that: "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."* Citing § 113-76. The District Court relied in part upon the Fourth Circuit's decision in *Faubourg Marigny Improvement Association, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, in which the Fourth Circuit noted that the portion of the Municipal Code that allowed the council the power to amend a zoning ordinance without referral to the planning commission

² Art. II (A) of the Home Rule Charter identifies those acts requiring an Ordinance, and specifically includes any act which adopts or modifies the official map, plot, subdivision ordinance, regulations, or zoning plan.

"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.'" This Court's reliance on in *Faubourg Marigny* is misplaced.

During oral argument on the Parties cross motions for summary judgment, Defendants argued to the Court that the *Faubourg Marigny* analysis is dicta. The only issue before the *Faubourg* court was an appeal from a denial of an injunction. The *Faubourg* court addressed two provisions of the Code of Ordinances: legislation of equal dignity (and attempting to harmonize them), and that the actions of the city were subject to the limitations of Title 33 of the Revised Statutes.

This Court was not called upon to harmonize conflicting provisions within the SJBP Code of Ordinances as in *Faubourg*, but to resolve a clear conflict between the Home Rule Charter and the Code of Ordinances. The provisions of Title 33 do not apply to SJBP. SJBP's Home Rule Charter vests the Council with the authority to add an amendment to an ordinance at the same meeting during which the ordinance is being considered without referral to any other body. SJBP Code of Ordinances require an amendment to a zoning ordinance to be considered by the planning commission. When there is clear conflict, the Home Rule Charter provisions must prevail.

In *Fridge v. City of Marksville*, 2022 WL 10456076 (W.D. La. 2022), the federal court for the Western District applied this same rationale to the interpretation of a Louisiana criminal statute:

If even we conceded that ambiguity plagues the language of the statute or that its application, as written, might invite an irrational reading, the Supreme Court instructs us to engage in this kind of interpretation only for a conflict of laws equal in dignity and for those acts of legislation passed around the same time. See, e.g., Erlenbaugh v. United States, 409 U.S. 239, 243-44 (1972) (noting that applying the *in pari materia* canon of statutory construction "makes the most sense when the statutes were enacted by the same legislative body at the same time."); cf. Nitro-Lift Techs., L.L.C. v. Howard, 568 U.S. 17, 21-22 (2012). *Thus, this interpretive method is not appropriate when reading a state statute in light of a state constitutional provision.*

In *McMahon v City of New Orleans*, 2018-0842 (La. App 4 Cir. 9/4/19) 280 So.3d 796, the City of New Orleans appealed the granting of a partial summary judgment which held that a city ordinance providing for the use of an automated traffic enforcement system violated the city's home rule charter. The Court of Appeal affirmed granting of summary judgment and recognized the numerous Louisiana cases which have held that a political subdivision, whether city or parish of this state: "must pass ordinances in conformity with its home rule charter:" The Court stated:

The power of a home rule government within its jurisdiction is as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its home rule charter. The City must pass ordinances in conformity with its home rule charter. . . Louisiana jurisprudence is replete with decisions striking municipal and

parish ordinances as unlawful, and therefore being considered as null and void and/or inoperative. In *Tardo v. Lafourche Parish Council*, 476 So.2d 997, 999 (La. App. 1 Cir. 1985), the First Circuit upheld a trial court's finding that an ordinance (adopted by the Lafourche Parish Council after the budget without the approval of the Parish President) was invalid *because it violated the Parish of Lafourche's home rule charter mandates*. In *Schmitt v. City of New Orleans*, 461 So.2d 574, 577-78 (La. App. 4 Cir. 1984), this Court affirmed the trial court's determination that several zoning ordinances passed by the City of New Orleans *were null and void as they violated the City's home rule charter*. In *Lafayette City Gov. v. Lafayette Mun. Bd.*, 01-1460 (La. App. 3 Cir. 5/8/02), 816 So.2d 977, the Third Circuit affirmed the trial court's granting of a preliminary injunction after determining that the Lafayette Municipal Fire & Police Civil Service Board's passage of a civil service rule concerning annual vacation and leave for policemen, which conflicted with its prior agreement with the Lafayette City Government concerning the specifics of said rule, *violated the Lafayette City Government's home rule charter*.³

There is no equality between SJPB's Home Rule Charter and its Code of Ordinances. This Honorable Court should have concluded that the Home Rule Charter governs. Accordingly, the Parish Council was not required to submit the Amendment to the Planning Commission. SJPB's Home Rule Charter specifically recognizes the limits of the Council's authority. It provides: "The parish shall have and exercise such other powers, rights, privileges, immunities, authority, and functions not inconsistent with this Charter."⁴ The parish council did not have authority to pass a contradictory ordinance as the SJPB's Home Rule Charter provisions allowed for the amendment of an Ordinance without referral to the planning commission. Any conflicting provisions between the Home Rule Charter and Code of Ordinances are not to be granted equal authority. The provisions of the Home Rule Charter must prevail.

B. Alternatively, the Court Should Sever the Amendment

Respectfully, the Amendment to Ordinance 90-27 is severable from the main portion of the Ordinance. The Ordinance was already properly submitted to the Planning Commission for review and recommendation.⁵ The Amendment offered and accepted at the SJPB council meeting by councilman Lewis can be separated from the remainder of the ordinance without destroying the intention of the Parish Council to zone the subject property I-3, and the remainder of Ordinance 90-27 is valid and operational in the Amendment's absence.

An invalid portion of an ordinance can be severed so long as that portion is independent and separate from the remainder of the ordinance such that the remainder stands as valid and operative. In *Bultman Mortuary Serv. v. City of New Orleans*, 174 La. 360, 365; 140 So. 503, 504

³ Id at 800.

⁴ Home Rule Charter, Art. II.

⁵ Plaintiff's Second Amended Petition, Exhibit G.

(1932), the Louisiana Supreme Court found that even though a portion of a city ordinance was unconstitutional and therefore invalid, the invalidity did not affect the remainder of the ordinance:

Where the portion of an ordinance which is invalid is distinctly separable from the remainder, and the remainder in itself contains the essentials of a complete enactment, the invalid portion may be rejected and the remainder will stand as valid and operative.⁶

In *Bultman*, the Court found that a portion of a city ordinance that afforded the city council the right to grant a mortuary permit at its unbounded discretion over an otherwise applicable prohibition against mortuaries within a certain commercial district was unconstitutional. The Court rejected both the portion of the ordinance that prohibited mortuaries as well as the portion that afforded the city the right to permit a mortuary, because the portions of the ordinance were so related that one could not exist without the other. *Id.* However, it found that the remainder of the ordinance, which prohibited other uses in the commercial district, was capable of enforcement in the absence of those portions concerning mortuaries and thus allowed the remainder of the ordinance to stand. *Id.*

In the present case, the Amendment to SJBP Ordinance 90-27 is separable from the remainder of Ordinance 90-27. Specifically, Ordinance 90-27 can exist without the Amendment. Ordinance 90-27 without the Amendment was considered by the zoning administrator, who advised the council that the re-zoning in Ordinance 90-27 was feasible under the then-existing regulations.⁷ The zoning administrator identified no basis upon which the ordinance could not stand without the Amendment. Ordinance 90-27 was, in no way, dependent upon the Amendment because the remainder of Ordinance 90-27, in itself, contains the essentials of a complete enactment as all procedures were properly followed. Plaintiffs have raised no procedural issues that otherwise provide a basis to invalidate the ordinance.⁸

The Louisiana Supreme Court has also stated the test of severability to be whether the portion of an ordinance to be severed can be separated without destroying the intention manifested by the enacting body. *Radiofone, Inc. v. City of New Orleans*, 616 So.2d 1243, 1245 (La.1993); *Gaudet v. Econ. Super Mkt., Inc.*, 237 La. 1082, 1092; 112 So.2d 720, 723 (1959); *Police Ass'n of New Orleans v. City of New Orleans*, 94-1078, p. 20 (La. 1/17/95); 649 So.2d 951, 965, *abrogated on other grounds by State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01); 779 So.2d 735. “To

⁶ *Id.* at 365, *citing* 43 C.J. pg. 547.

⁷ Greenfield’s Motion for Summary Judgment, Exhibit 7, Affidavit of M. Howard (Exhibit 2, attached thereto).

⁸ Written Reasons for Judgment and Judgment (August 4, 2023).

be capable of preservation, the remaining parts of an ordinance must contain an intelligible and valid ordinance capable of being placed in execution and conforming to the general purpose and intent of the enacting body.” *Radiofone*, 616 So.2d at 1249. Notably, none of these cases, including *Bultman, supra*, speculate that votes of the enacting body may have changed in the absence of the severed portion. The requirement is simply that intent is maintained and that the remainder is valid and operational in the severed portion’s absence.

The Louisiana Supreme Court has held that portions of an ordinance's grandfather clause requiring certain nondomiciliary employees to move into the city as a condition of promotion while exempting other nondomiciliary employees from that requirement was unconstitutional. *Police Ass'n of New Orleans v. City of New Orleans*, 94-1078 (La. 1/17/95); 649 So.2d 951. It then considered that the intent of the grandfather clause was to avoid hardship to employees by permitting them to retain current homes and severed only the unconstitutional portions, reasoning that striking only the unconstitutional portions of the domiciliary exemption was “more in keeping with the intent behind the grandfather clause than would be striking the exemption altogether.” *Id.* at 965.

In the present case, and alternatively, this Court should simply strike the Amendment from Ordinance 90-27. Such action affirms the intent of the ordinance without striking the ordinance in its entirety. Removing the Amendment from the ordinance simply reverts the buffer to that which would have applied in the original proposed ordinance. The intent behind Ordinance 90-27 was the rezoning of the identified properties for the purpose of facilitating industrial development in that location. The record is uncontradicted that the Parish Council followed appropriate procedures in furtherance of the intended I-3 use for this land.⁹ It published the ordinance, as written without the Amendment, in the newspaper and held public hearings. It considered recommendations from the zoning administrator, the planning commission, and the public regarding the I-3 use. To now void the entirety of this long-standing permissible use of the property on the basis of a thirty-year-old procedural deficiency in an amendment that pertains to a more protective use invalidates the general intent of the government at that time: I-3 use of this property.

⁹ In its Written Reasons for Judgment, this Court held that other procedural deficiencies alleged by Plaintiffs do not affect the validity of Ordinance 90-27.

IV. CONCLUSION

SJBP respectfully submits that its motion for new trial should be granted, that the Court should reconsider and withdraw its ruling, and that summary judgment be granted in favor of SJBP.

Respectfully submitted,

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Attorney for

By: 

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La. Bar Roll #24007
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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.

LaPlace, Louisiana this 15th day of August 2023.



SAMUEL J. ACCARDO, JR.