

COURT OF APPEAL  
FOR THE FIFTH CIRCUIT  
STATE OF LOUISIANA

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No. 24-CA-557

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BEVERLY ALEXANDER, et al.  
*Plaintiffs-Appellants*

VERSUS

ST. JAMES PARISH,  
*Defendant-Appellee*

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ON APPEAL FROM DECISION  
OF THE TWENTY-THIRD JUDICIAL DISTRICT COURT,  
PARISH OF ST. JAMES  
HONORABLE CODY MARTIN  
DISTRICT JUDGE, DIVISION B  
NO. 41903  
A CIVIL PROCEEDING

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**PLAINTIFFS-APPELLANTS' ORIGINAL BRIEF**

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**Lisa W. Jordan**, La. Bar No. 20451  
**Clara Potter**, La. Bar No. 38377  
*Counsel for Appellants Beverly  
Alexander and RISE St. James and  
as supervising attorneys for student  
attorneys Laura Derbonne and Tom  
Polites*

**Laura Derbonne**, Student Attorney  
**Tom Polites**, Student Attorney  
*Student counsel for Beverly Alexander  
(See Appendix A)*

TULANE ENVIRONMENTAL LAW  
CLINIC

**Pamela Spees**, La. Bar No. 29679

*Counsel for Appellants Inclusive  
Louisiana and Mt. Triumph Baptist  
Church*

CENTER FOR CONSTITUTIONAL  
RIGHTS

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## **STATEMENT OF JURISDICTION**

Petitioners-Appellants appeal the final judgment of the Twenty-Third Judicial District Court dated June 18, 2024. Petitioners-Appellants timely filed a motion for devolutive appeal on August 19, 2024. The district court granted the motion on August 22, 2024. Thus, this Honorable Court has jurisdiction over the matter pursuant to La. Const. art. V § (10)(A) and La. C.C.P. art. 2083(A).

## **STATEMENT OF THE CASE**

This case is about the St. James Parish Planning Commission’s failure to follow the plain language of the Parish’s land use ordinance in approving an application for expansion of a methanol production facility that included construction of a pipeline and access road in wetlands (“the Project”).

Appellee St. James Parish (“the Parish”), and Appellee Koch Methanol—which sought the approval—do not, and cannot, dispute that the Parish is bound by its own ordinance governing how it must approve or deny certain projects. Rather, Appellees urged an interpretation of the Parish’s ordinance that ignores its plain language and purpose *and* creates an absurd result. Specifically, the St. James Parish Planning Commission’s (“Planning Commission’s” or “Commission’s”) view that the land use ordinance allows construction of a pipeline in wetlands without the stricter form of review that the ordinance requires for incompatible uses ignores the provision’s explicit instruction that wetlands “should remain unoccupied.”<sup>1</sup> Appellees’ interpretation disregards the purpose of the ordinance and results in a reading of the statute that is the opposite of what it says; that is, the result of their interpretation is that construction in wetlands can be approved with more ease and less scrutiny than construction in other less-sensitive and less-protected land use categories.

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<sup>1</sup> St. James Parish Land Use Ordinance, Art. II, § 82-25(c).

This first-order error by the Commission led to and was compounded by a second fundamental error in the Parish’s review of the Project: *no parish body* made the mandatory findings the ordinance requires. That is to say that even accepting Appellees’ argument that the Planning Commission had authority to approve a land use application involving construction in wetlands rather than make a recommendation to the Parish Council (as would be required by the ordinance), the Parish Council then conducted a standardless review of the application on “appeal.” Instead of weighing the application, which included new evidence submitted by both Koch and Petitioners, under standards dictated by the ordinance, the Council merely denied Petitioners’ appeal and affirmed the Commission’s decision, which was *ultra vires* to begin with. Appellees claim that the ordinance permits a structureless, standardless form of review that Louisiana law forbids.

Perhaps the best argument against the Parish’s interpretation comes from the Parish itself in its review of land use applications subsequent to this litigation. As shown further below, the Planning Commission has since explicitly acknowledged that it “only has the authority to recommend action, and the final decision rests with the parish council” when reviewing recent project proposals requiring construction of pipelines in non-allowable areas, “including in Wetlands.”<sup>2</sup>

The district court erred in holding that the Parish did not need to apply the ordinance’s more stringent review to the Project. Should the ruling stand, the Parish will be allowed to skirt the review process outlined in the ordinance, which exists to ensure that the Parish weighs whether certain projects will sufficiently benefit and not harm their community. This ruling contravenes the clear language of the ordinance and ignores the reason the ordinance requires the Parish to make these findings – as even the Parish now acknowledges.

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<sup>2</sup> See, *infra* n. 10, July 29, 2024, Minutes of Planning Commission meeting.

## **ASSIGNMENT OF ERRORS**

The district court erred when it held that the Planning Commission did not need to follow § 82-25(e) of St. James Parish’s Land Use Ordinance. The district court additionally erred by not holding the Parish Council’s decision to be arbitrary and capricious and in violation of the Constitution due to its failure to apply any standard to its review of Koch’s land use application on appeal.

## **ISSUES FOR REVIEW**

1. § 82-25(e) of the St. James Parish land use ordinance provides clear instructions that the Planning Commission and Parish Council (“Council”) must adhere to when approving non-allowable uses. Pipelines are not “specifically listed as allowable” uses in Wetlands. Did the Parish violate its ordinance when it approved the Koch Project—including its pipeline and access road in wetlands—without following the mandated Tier 3/section (e) procedures, including making affirmative findings?
2. Given the clear and unambiguous language in §§ 82-25(c) and (e) that a pipeline is not a use “specifically listed as allowable” in areas designated as Wetlands, should the court have considered the Parish’s legislative intent in writing the ordinance? And even if the court should have, does any evidence support the court’s position that the Parish did not want all Wetlands projects to undergo Tier 3/section (e) review?
3. The language of the ordinance demonstrates an intent to protect the wetlands from unnecessary intrusion, stating that they “should remain unoccupied, except for unique situations requiring a location in the water.” Considering this, should the court have held that it would constitute an absurd result for the Planning Commission and Council to review all proposed projects in wetlands under (e)?



4. The Parish Council on appeal applied no standard to Koch's land use application, despite the ordinance providing a standard in § 82-25(h). Did the court err in failing to find that the Council's standardless review of Petitioners' appeal violated the ordinance and Louisiana Constitution?

### **FACTUAL BACKGROUND**

Petitioners include a resident of St. James Parish, two faith-based community organizations that advocate for a healthier environment in the Parish, and a church located in the Parish. Koch Methanol St. James, LLC is a methanol production facility located in St. James Parish's Fifth District on the west bank of the Mississippi River. R. 176. The facility has been operating since 2015. R. 155.

#### **A. The Proposed Project and its Impacts**

On July 12, 2023, Koch applied for a Land Use Permit with the St. James Parish Planning Commission to expand its production facility ("Facility") and install a pipeline and access road through wetlands. R. 176-217. The Project would increase the refined methanol production of the Facility by 25%, but would increase the Facility's allowable pollution into the air by 75%. R. 79, 187, 269. This includes almost doubling the permitted emissions of both volatile organic compounds (VOCs) and carbon monoxide, to 166.34 and 181.46 tons per year, respectively; and an over 50% increase in permitted particulate matter and nitrogen dioxide emissions, to approximately 75 and 152.84 tons per year, respectively. R. 269, 356-57. While part of the expansion involves construction within the Facility's current footprint in an Industrial land use area, the expansion also requires the construction of a pipeline and a corresponding access road for the transportation of highly flammable ethane gas *outside* the current footprint into a Wetlands land use area. R. 182-183.

The Project would have permanent impacts on the local environment, exacerbating the already high levels of air pollutants to which the community is

exposed and compromising their flood protection by filling and industrializing more wetlands. R. 250-53. As Koch acknowledged in application documents submitted to the Louisiana Department of Environmental Quality (DEQ), the Project will convert the Facility into a major source of air pollution under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act. R. 418. This means that the emission limit increases Koch seeks will permit its Facility to annually emit over 100 tons of nitrogen oxides, carbon monoxides, and volatile organic compounds. R. 236. This expansion, combined with other industrial developments in the area, would push the Parish closer to violating a federal standard for ambient concentrations of nitrogen dioxide (NO<sub>2</sub>) under the National Ambient Air Quality Standards (“NAAQS”) program. R. 237.

In addition to the Project’s potential health impacts on Fifth District residents at the current footprint, the Project’s pipeline construction element, which includes an access road, would have physical impacts on areas not intended for industrial development; namely, the wetlands. Wetlands are a critical resource to Louisiana’s coastal zone—they play an essential role in protecting communities from flooding and storm water. R. 156. In an area that frequently faces hurricane risk, they are especially critical to ensuring resiliency and safety for residents and industrial facilities alike. *Id.* Furthermore, this pipeline will transport highly flammable ethane gas, and, like all pipelines, the pipeline itself has the potential to burst and pollute this sensitive area. R. 583.

Appellants—organizations with members living in St. James Parish, including in the 5th District, and Beverly Alexander, an individual who has lived in the 5th District her whole life—are most at risk from this industrial expansion.

### **B. The St. James Parish Land Use Regime**

The St. James Parish land use plan (“Plan” or “Ordinance”) includes, in subsection (c), a table listing land use categories and the accompanying allowable

uses for those categories. Ord. Art. II, § 82-25(c).<sup>3</sup> Among the listed land use categories are Residential, Commercial, Industrial, and Wetlands. *Id.* Next to each of these categories are specifically listed “allowable uses,” with the exception of the Wetlands and Water categories, which are “shown for information only.” *Id.* These two categories include the instruction that they “should remain unoccupied except for unique situations requiring a location in the water.” *Id.*

Following this table, the Plan outlines three types of review of land use applications. They can be understood as Tier 1, Tier 2, and Tier 3, in order of stringency of review.<sup>4</sup> Tier 1 is the least restrictive level of review and is not relevant to this appeal.<sup>5</sup> Tier 2, under subsection (f), applies to a category of uses that are specifically listed as allowable in an area under subsection (c) but which, due to their larger size and/or environmental impacts, must undergo additional review. *Id.* at (f). Under the Plan, the Planning Commission may grant these land use approvals, but if the Commission’s approval is appealed, the Parish Council must approve the land use. The Planning Commission, or the Parish Council on appeal, are required to consider the factors and follow certain procedures outlined in subsection (g), (h), and (i). *Id.*; *id.* at (g), (h), (i).

Tier 3, under subsection (e), is the most stringent level of review for land use applications and applies to all uses “not specifically listed as allowable in a use category in subsection (c)” of the Plan. *Id.* at (e) (emphasis added). Such uses “are prohibited unless the Planning Commission considers the use in accordance with subsections (g), (h) and (i), and the parish council approves the use.” *Id.* Thus,

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<sup>3</sup> This Court may take judicial notice of the contents of the land use ordinance under La. Code Evid. art. 202(c). *See* St. James Parish Land Use Ordinance, Art. II § 82-25, available at [https://library.municode.com/la/st.\\_james\\_parish\\_council/codes/code\\_of\\_ordinances?nodeId=PTII COOR\\_CH82PL](https://library.municode.com/la/st._james_parish_council/codes/code_of_ordinances?nodeId=PTII COOR_CH82PL).

<sup>4</sup> This terminology is not in the Land Use Plan but was used by the Parish before the district court. For clarifying purposes, Appellants adopt that same terminology.

<sup>5</sup> Tier 1, under subsection (d), applies to certain uses listed as allowable in an area under subsection (c) of the ordinance. § 82-25(d). Tier 1 review is done through regular building permitting processes and not through the Commission or the Council.

under this tier, the Commission can only consider the use and provide a recommendation to the Parish Council; the Council has the sole authority to approve or deny the land use application. *Id.* Further, the Plan mandates that before the Commission can recommend or the Council can approve such a nonallowable use, they must make “affirmative findings that there is a compelling public benefit, that the use is compatible with surrounding uses[,] and that adverse impacts of the use are inconsequential . . . .” Ord. Art. II, § 82-25(e).

The procedures and considerations in subsections (g) and (h), which the Plan makes applicable to both Tier 2 (subsection f) and Tier 3 (subsection e) uses, encompass application and public notice requirements (subsection (g)), as well as factors that the Parish must consider for approval or denial (subsection (h)), including public benefits and impacts to the environment. *Id.* at (g), (h).

### **C. The Commission’s Decision and Appellants’ Challenge**

The Commission classified the Koch application as a Tier 2 project, treating both the portion in the Industrial zone and the pipeline/access road portion as allowable uses. Specifically, the Commission found that the pipeline was a “unique situation requiring a location in water,” then asserted that this made it an “allowable land use in the Wetlands.” R. 248.<sup>6</sup> It approved the application on July 31, 2023, without making the affirmative findings required for nonallowable uses. R. 218-249.

On August 30, 2023, Appellants appealed the Commission’s decision to the St. James Parish Council, asserting that the Planning Commission had used the improper procedure for reviewing the application and providing evidence of omissions in Koch’s application, as well as environmental impacts, insufficient benefits, and improper industrial development in Wetlands. R. 250-273.

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<sup>6</sup> The Commission supported this decision with a summary statement that there was an existing ethane pipeline in wetlands to which the new pipeline would connect. R. 248.

On September 22, 2023, Koch submitted a new application to the Council with updated information and additional documents. R. 366-546. The Council held a public hearing on September 27, 2023, where both Petitioners-Appellants and Koch presented arguments. R. 565. Public comment followed, including residents who raised the real and potential adverse health and environmental impacts of the Project, while Koch employees spoke in support of the application. R. 701-714. The Council voted to reject Petitioners' appeal. R. 743. The subsequently published minutes from the meeting reflect that the Council made no findings in connection with its decision. R. 743.

However, Councilmembers did speak their views after the hearing and prior to their vote. Rather than meaningfully engaging with the information presented in the application, the appeal, and the public comments, Councilmembers' remarks reflected numerous random and irrelevant considerations, including the desire to approve every industrial application that comes before them.<sup>7</sup>

On October 27, 2023, Appellants filed a Petition for Judicial Review with the 23rd Judicial District Court, challenging the Parish's approval of the Koch Project. R. 32-47. The parties briefed the case, and on April 8, 2024, all parties presented oral argument, and the court requested a post-hearing brief from all parties on four issues, R. 858-863,<sup>8</sup> with which all parties complied on May 8, 2024. R. 864-901.

On June 18, 2024, the district court ruled in favor of the Parish, holding that the Commission and Council "applied the proper standard of consideration to Koch

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<sup>7</sup> For example, Councilman Nash stated he will support: "any industry that comes in that's going to provide sustainable income in the St. James Parish in revenues and taxes," and emphasized "[i]f we continue to fight against industry every time industry comes to St. James Parish, then there won't be a St. James Parish." R. 107.

<sup>8</sup> Those questions were: 1) Whose decision should the Court evaluate to determine whether the decision-making body breached the arbitrary and capricious standard; 2) What standard does the Council follow in an appeal of a Commission decision; and 3) What is the legal effect if that standard is not defined in the statute; 4) Who makes the determination as to whether a unique situation exists, and why does the party who makes it have the authority to make that decision?

Methanol’s requested permit,” under the ordinance, R. 29, but not addressing what standard the Council had used in its review of the Commission. R. 26-31.

Petitioners subsequently filed a timely motion for appeal on August 19, 2024, to this Court. R. 907-908.

### **SUMMARY OF THE ARGUMENT**

The Parish’s approval of the Koch Methanol land use application was void because the Planning Commission did not apply the ordinance’s more stringent Tier 3 review process that is mandated under § 82-25(e) of the land use ordinance for nonallowable uses and because the Parish Council did not apply any standard to the land use application.

The Parish was required to review the project under Tier 3/section (e) because the Land Use Ordinance does not “specifically” list pipelines as “an allowable use” in Wetlands. The district court should have followed the plain language of the ordinance that dictates this review, rather than searching for and presuming a legislative intent that was nowhere in the record. Furthermore, contrary to the district court’s opinion, reviewing all projects that will go in the Wetlands under Tier 3/section (e) does not create an absurd result. Rather, by allowing the Parish to skirt section (e) review, the district court removed the need for the Commission and Council to make mandatory findings that a project has compelling benefits and minimal drawbacks before approving that nonconforming use. The Parish has since abandoned the interpretation it initially espoused in this litigation and has acknowledged in subsequent project reviews that the plain language and purpose of the statute require the stricter level of review for pipeline projects in wetlands.

Further, by neglecting to follow a clear standard—despite the ordinance’s requirement to consider and balance environmental impacts and public benefits—the Council’s actions were arbitrary, capricious, and procedurally deficient.

Judicial deference for land use decisions should not be extended to protect the Parish's choice to ignore the ordinance's plainly-stated mandatory procedures for land use applications. This lack of adherence to any rational standard of review constitutes a failure to provide a fair, reasoned decision-making process for citizens to rely on and violates both the law and constitutional protections.

## ARGUMENT

### **I. Standard of Review**

This Court shall apply *de novo* review to the district court's rulings because they present questions of law. *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 03/09/22), 337 So.3d 534, 540. Here, the district court improperly deferred to the Parish's suggested interpretation of the ordinance. Louisiana law requires that questions of law, such as the proper interpretation of a statute or ordinance, be reviewed *de novo*. *Id.* While a "parish may have the discretion to approve or disapprove [the subdivision] plan itself," it has "*no discretion* in following the requirements of its own ordinance." *Folsom Rd. Civic Ass'n v. Par. of St. Tammany*, 425 So.2d 1318, 1320 (La. App. 1 Cir. 1983) (emphasis added). What procedures are required by a parish ordinance is a question of law for a reviewing court to answer *de novo* before determining whether those procedures were followed.

### **II. The plain language of the ordinance and rules of statutory construction require reversal of the district court's ruling.**

The dispute in this case centers on the proper interpretation of the Parish's land use ordinance. As in *Yolande Schexnayder & Son, Inc. v. Parish of St. James*—a ruling from this Court interpreting the same land use ordinance—the question here is whether the district court's interpretation of the ordinance aligns with the text's plain meaning or leads to an "absurd result." Here, the question boils down to whether the land use plan requires more stringent review for construction in Wetlands, which in turn rests on the question of whether a

pipeline—unique situation or not—is “specifically listed as [an] allowable” use in areas designated as Wetlands. Because pipelines are not specifically listed as allowable in Wetlands, and because the land use plan clearly expresses an intention that wetlands should be protected via its instruction that they “should remain unoccupied” absent unique situations, the district court’s ruling was in error and leads to an absurd result—*i.e.*, that wetlands get less protection, instead of more, than other land use categories.

In *Yolande Schexnayder*, this Court held that the trial court’s interpretation of the Land Use Plan “[led] to absurd results and [did] not reasonably comport with the Parish’s intent set forth in the Land Use Plan.” *Id.* at 13. In that case, the trial court had ruled for the petitioners who argued that, under the land use plan, they did not need to seek approval for a nonconforming use of their property. But this Court rejected that holding when it found that the result of the trial court’s ruling would be “absurd” because owners seeking to use their property in a manner not in conformity with the land use designation “would be subject to *less governmental review* than a property in use as designated pursuant to the Land Use Plan.” *Id.* (emphasis added). The same result would obtain here, as the district court’s ruling would mean that wetlands would receive less governmental review than other land use designations.

Louisiana Civil Code article 9 establishes that when a law is clear and unambiguous, courts must apply the ordinance as written and cannot further interpret the law in search of the legislative body’s intent. This Court reiterated and adhered to this principle in *Yolande Schexnayder*.

Despite acknowledging the *Yolande Schexnayder* precedent to the contrary, the district court turned away from the clear text of the ordinance and instead presumed a legislative intent unsupported by any record evidence, and which contradicts the clear purpose of the provision at issue, *i.e.*, to protect wetlands. In



doing so, the district court invoked *New Cingular Wireless, PCS, LLC v. City-Parish of East Baton Rouge* for the proposition that a legislative body's interpretation of its legislative zoning ordinance is entitled to great weight. R. 27 (citing *New Cingular Wireless, PCS, LLC v. City-Parish of E. Baton Rouge*, 2021-0292 (La. App. 1 Cir. 12/30/21); 340 So. 3d 1037). At the outset, *New Cingular Wireless* is not applicable to the question before this Court, as *New Cingular Wireless* did not provide guidance as to a question of statutory interpretation.

More fundamentally, the Louisiana Supreme Court has made clear that consideration of a municipality's interpretation is only warranted when 1) the plain text is ambiguous and 2) when the construction of the ordinance proposed by "those charged with the duty of its administrative application" has been *consistent*. *Gautreau v. Bd. of Elec. Examiners of City of Baton Rouge*, 167 So. 2d 425, 433 (La. Ct. App. 1st Cir. 1964) (noting that a "construction *consistently accorded*" an ambiguous statute "by those charged with the duty of its administrative application" is of "great persuasive (but not necessarily controlling) weight" in the judicial interpretation thereof) (emphasis added).

Here, the ordinance language is not ambiguous. However, even if it were, since the district court's ruling, the Parish's interpretation and application of this ordinance ***has changed to align with Petitioners'***. In a July 29, 2024 meeting, the Planning Commission limited its approval of a new pipeline to "those portions of the project *within designated Industrial Use areas*," in accordance with the limits of its authority set out in subsections (f) and (e). July 29, 2024 Minutes, St. James

Parish Planning Commission (emphasis added).<sup>9</sup> The Commission added: “For these other segments [the parts not in designated Industrial areas, including in Wetlands], the planning commission only has the authority to recommend action, and the final decision rests with the parish council.”<sup>10</sup> And in its evaluation of another proposed pipeline, the Commission also acknowledged that its authority to approve the pipeline is limited to areas where the pipeline is within land designated for Industrial use.<sup>11</sup> When considering the Planning Commission’s recommendations on these projects, the Parish Council acted as the final approver, going through the (e) factors to approve a pipeline in wetlands.<sup>12</sup>

The Parish’s shift in its interpretation and application of the ordinance undermines any argument for deference to its earlier position. At the time this case was argued before the district court, the Parish advocated for an interpretation inconsistent with the plain text of the ordinance, but it has now adopted the plain-language interpretation Appellants have emphasized here. Deference to the Parish’s earlier position is therefore unwarranted. *See Gautreau, supra*. Courts should not uphold an interpretation that the Parish has effectively abandoned,

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<sup>9</sup> See Proceedings of the Planning Commission, Parish of St. James, State of Louisiana (July 29, 2024) (“July 29, 2024 Minutes”) at 1, available at [https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/\\_07292024-509](https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_07292024-509). These minutes are not in the record before this Court, but this Court may take judicial notice of publicly available documents. The Louisiana Code of Evidence defines a judicially noticed fact as “one not subject to reasonable dispute” because it is either “(1) [g]enerally known within the territorial jurisdiction of the trial court; or (2) [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” La. Code Ev. Art. 201(B). Because these records are publicly available, they meet the second prong of Art. 201 (B).

<sup>10</sup> July 29, 2024, Minutes at 1.

<sup>11</sup> See Proceedings of the Planning Commission, Parish of St. James, State of Louisiana (June 24, 2024), available at [https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/\\_06242024-505](https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_06242024-505). These minutes are not in the record before this Court, but this Court may take judicial notice of publicly available documents. *See supra* n. 9.

<sup>12</sup> See, e.g., A Resolution Approving the Application of Occidental Chemical Corporation Under the St. James Parish Land Use Ordinance, With Conditions, Agenda of the St. James Parish Council, August 7, 2024 at PDF p. 51, available at [https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/\\_08072024-512](https://www.stjamesla.com/AgendaCenter/ViewFile/Agenda/_08072024-512); see also Minutes of the August 7, 2024 meeting of the St. James Parish Council (approving resolution at PDF p. 7), available at [https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/\\_08072024-512](https://www.stjamesla.com/AgendaCenter/ViewFile/Minutes/_08072024-512). These minutes are not in the record before this Court, but this Court may take judicial notice of publicly available documents. *See supra* n. 9.

particularly when the ordinance’s plain text supports a different, unambiguous reading that aligns with, what is now, the Parish’s current position. The Parish’s bespoke interpretation of the ordinance in this matter—tailored to this particular decision—distorts the ordinance’s plain language and would lead to absurd results in direct contravention of its purpose. If anything, the Parish’s actions only reinforce the need to apply the ordinance as written rather than relying on fluctuating and contradictory municipal interpretations.

### **III. The Planning Commission violated the ordinance when it approved Koch’s pipeline as an allowable use in a Wetland area.**

The Planning Commission exceeded its authority under the land use ordinance when it approved Koch Methanol’s land use application under Tier 2/ section (f), as though it was a use “specifically listed as allowable,” and therefore without addressing the affirmative findings mandated by the ordinance and without referring it to the Council for final approval, as § 82-25(e) of the ordinance requires. This error circumvented critical procedural and substantive protections embedded in the ordinance intended for the benefit and protection of the Appellants.

The Commission’s failure to follow the clear requirements of the ordinance renders its decision null and void. *Folsom Rd. Civic Ass’n*, 425 So.2d at 1320 (while a “parish may have the discretion to approve or disapprove the plan itself,” it has “no discretion in following the requirements of its own ordinance[.]”); *Tardo v. Lafourche Par. Council*, 476 So.2d 997, 1001 (La. Ct. App. 1 Cir. 1985) (budget amendment invalid because it violated the procedural requirements of the parish’s home rule charter mandating approval by parish president).

The Commission’s decision also ignored the plain language of the ordinance. “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further

interpretation may be made in search of the intent of the Legislature, nor shall the letter of the law be disregarded under the pretext of pursuing its spirit.” La. Civ. Code Ann. art. 9. “A statute's meaning and intent is determined after consideration of the *entire statute and all other statutes* on the same subject matter, and a construction should be placed on the provision in question which is consistent with the express terms of the statute and with the obvious intent of the Legislature in its enactment of the statute.” *ABL Mgmt., Inc. v. Bd. of Sup'rs of S. Univ.*, 2000-0798, p. 6 (La. 11/28/00), 773 So. 2d 131, 135 (emphasis added).

The district court then endorsed these errors, finding ambiguity in the clear language in subsection (c) which instructs that wetlands “should remain unoccupied,” except for unique situations, and subsection (e) requiring heightened review for proposed uses that are not “specifically listed as allowable.” R. 28. The court further erred by finding that application of the plain language of the ordinance would lead to an absurd result. R. 28. This interpretation not only disregards the plain language of the ordinance, but also its stated purpose, and produces actual absurd results by granting less protection to wetlands.

***A. Section 82-25(e) of the ordinance provides clear instructions that if the ordinance does not specifically list a use as allowable, the Parish must adhere to the approval process outlined in Tier 3/section (e).***

In reviewing Koch’s application—and the pipeline component of its project in particular—the Commission was required to follow § 82-25(e) of the ordinance before it could approve the Project and make affirmative findings that the Project would have compelling public benefits, would be compatible with surrounding uses, and that adverse impacts of the Project would be inconsequential. Instead, the Commission illegally followed subsection (f) of the ordinance which applies to uses proposed for an area in which they are listed as allowable. Subsection (e) states that:

Uses not specifically listed as allowable in a use category in subsection (c) of this section are prohibited unless the planning commission considers the use in accordance with subsections (g), (h) and (i), and the parish council approves the use. Any such recommendation or approval shall be made on a case-by-case basis. *The planning commission shall not recommend a use for approval and the parish council shall not approve a use, under this subsection unless it makes affirmative findings that there is a compelling public benefit, that the use is compatible with surrounding uses and adverse impacts of the use are inconsequential; or that approval is required as a matter of constitutional imperative or other vested legal right superior to this section.*

Ord. Art. II, § 82-25(e) (emphasis added). Thus, unless the type of project seeking approval is specifically listed in the land use plan as an allowable use under the appropriate category, the Commission cannot approve an application. Instead, it must make a recommendation to the Council, which then makes the ultimate decision. Both the Commission recommendation and the Council decision must be based on the factors enumerated in section (g)-(i), *and* neither body can approve a project unless the project satisfies additional hurdles that must be memorialized as affirmative findings concerning the public benefits the project provides, the compatibility with surrounding uses, and the adverse impacts the project causes.

The Commission was required to follow this procedure for Koch Methanol’s application, and the district court erred in allowing the Commission to circumvent this procedure. The language of the Ordinance is clear, not ambiguous. Not only does subsection (c) not list “petrochemical operations” or “pipelines” as allowable uses in the Wetlands category, it does not list *any* allowable use. Rather, this provision urges that “wetland areas should remain unoccupied except for unique situations requiring a location in the water....” Furthermore, the ordinance states that the “Allowable Uses” column for the Wetlands category is “Shown for information only.”

Land Use Category	Allowable Uses
Wetlands	Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18.

In contrast, the “Industrial” land use category provides a list of allowable uses, including “Petrochemical operations” and “pipelines.”

Industrial	Petrochemical operations; manufacturing; tank farms; material processing and production; grain elevators, railroad yard facilities; raw, spent, and finished material storage; warehousing or open-yard equipment; material handling facilities (such as conveyors, <b>pipelines</b> , and trans-shipment facilities); and associated support facilities and offices.
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Ord. Art. II, § 82-25(c) (emphasis added). Other land use categories contain a myriad of specifically listed uses such as “grain elevators” in the Industrial category, and “restaurants” in the Commercial category. Indeed, the fact that “pipelines” are specifically listed as allowable uses in the “Industrial” land use category serves as yet another clear direction that pipelines are *not* specifically listed as allowable uses in a Wetlands area, regardless of whether they can nevertheless be approved as a “unique situation.”

Therefore, the Commission was required to consider the Project, and its pipeline construction in wetlands, to be a use not specifically listed as allowable. This would dictate application of the Tier 3/section (e) procedures if the Parish wanted to consider whether it could approve the Project anyway, as a “unique situation requiring a location in water.” The Commission would then make (or be unable to make) the necessary affirmative findings, and recommend an action to the Council. Instead, the Commission unilaterally approved Koch’s application, ignoring its procedural and substantive obligations under section (e).

The Commission attempted to justify its action by claiming that the Koch pipeline in wetlands is “a unique situation requiring a location in a Wetlands area,” and that such unique situations are allowable uses in Wetlands. R. 248. But, even if the Commission considers the pipeline approvable as a unique situation, that determination does not make the pipeline a specifically listed allowable use. Appellants acknowledge that the ordinance permits the Parish to approve some

nonallowable uses in Wetlands, those that can meet the stringent Tier 3/section (e) criteria. But that does not make those projects specifically listed as allowable.

To find otherwise requires the Court to ignore not one, but two clear provisions in the ordinance. First, the Court would have to ignore that the ordinance prohibits “[u]ses not specifically listed” as allowable in a use category and dictates special procedures for approval of these uses. Ord. Art. II, § 82-25(e). The Parish’s interpretation that pipelines become allowable uses upon a finding that they present a unique situation requires ignoring that pipelines are not “specifically listed” as allowable in Wetlands. Second, the Parish’s interpretation requires ignoring that the Wetlands allowable use category is “[s]hown for information only” and that they “should remain unoccupied.” *Id.* at § 82-25(c). The Parish’s argument would render this language superfluous, a result prohibited by the rules of statutory interpretation. *Langlois v. E. Baton Rouge Par. Sch. Bd.*, 1999-2007, p. 5 (La. 5/16/00), 761 So.2d 504, 507 (Courts are “bound to give effect to all parts of a statute and cannot give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided.”). Therefore, the district court erred in accepting the Parish’s interpretation of the Ordinance that renders meaningless the term “specifically listed” in § 82-25(e) and the term “Shown for information only” in § 82-25(c).

In its briefing to the district court, the Parish urged that such clear directions to keep wetlands unoccupied are aspirational, rather than mandatory. R. 816. But this both ignores other plain language in the ordinance and misinterprets Appellants’ argument. The ordinance explicitly *prohibits* nonallowable uses unless the proper procedures are adhered to: “Uses not specifically listed as allowable in a use category . . . are prohibited . . . .” Ord. Art. II, § 82-25(e). Further, Appellants do not claim that no new structures can ever be built in a Wetlands area. The “unique situation” provision contemplates some exceptional scenarios. But the

Commission and Council must approve these types of projects pursuant to section (e). Namely, the Commission must recommend action to the Council, the Council must approve or deny the application on its own, and *both* bodies must make affirmative findings. By making these findings, the Parish will determine whether the project provides a compelling public benefit, whether the use is compatible with surrounding uses, and whether adverse impacts of the use are inconsequential. Ord. Art. II, § 82-25(e). This process ensures that the exceptional circumstance of a unique situation—like any other nonallowable use—does not swallow the prohibition. While an applicant may be able to demonstrate a “unique situation requiring a location in water,” under subsection (e) the Parish Council must then decide whether the proposed benefits of a particular project outweigh the harms to Parish residents, particularly in sensitive areas like wetlands.

***B. The district court erred in its search for legislative intent and in finding that applying the ordinance as written would achieve an absurd result.***

Given that the language of the ordinance is clear, and that applying that clear language requires that Koch’s Project be reviewed under section (e), the district court erred by impermissibly looking for legislative intent and not applying what it referred to as “a literal interpretation.” R. 28. Louisiana law provides: “The text of a law is the best evidence of legislative intent.” La. R.S. § 24:177(B)(1).<sup>13</sup> Both findings led the court to an impermissible and faulty analysis of the Parish’s intent in enacting sections (c) and (e) of the ordinance. “When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.” La. R.S. § 1:4.; *see also* La. Civ. Code. art. 9 (“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may

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<sup>13</sup> This Court has found that codal provisions dictating statutory interpretation principles apply equally to interpretation of ordinances. *Yolande Schexnayder*, 21-416 at p. 9; 337 So. 3d at 540 (finding that “[t]he statutory and jurisprudential rules for statutory construction and interpretation apply equally well to ordinances, rules, and regulations.”).



be made in search of the intent of the legislature”); *Welch v. United Med. Healthwest-New Orleans, LLC*, 21-684, p. 7 (La. App. 5 Cir. 8/24/22), 348 So.3d 216, 222 (“[W]e cannot look to legislative intent . . . where the law is clear and unambiguous.”). Statutory interpretation begins with the language of the statute itself. *David v. Our Lady of the Lake Hosp., Inc.*, 02-2675, p. 11 (La. 7/2/03), 849 So.2d 38, 46.

Specifically, the district court stated it does not believe that classifying all projects that will go in the wetlands as nonallowable uses “would have been the intent of the Council when enacting this ordinance because such a requirement would be overly exhaustive and more times than not unnecessary.” R. 28. Even if the language were ambiguous, which Appellants deny, no valid basis appears in the record for what the district court called “the intent of the Council.” R. 28. The record is entirely devoid of any facts or evidence to suggest that the approval process outlined in section (e) would be “overly exhaustive” or “unnecessary” for development in wetlands. Indeed, concepts of textual interpretation point to “the occasion and necessity for the law,” as an important factor beyond the plain language. La. R.S. § 24:177(B)(2)(a). The Parish’s choice of the language “shown for information only” and “wetland areas should remain unoccupied” in subsection (c) demonstrates that one of the ordinance’s purposes was to increase protections for the wetland areas.

Additionally, the law provides the proper way for a body to establish legislative intent—a process that is not reflected anywhere in this record. La. R.S. § 24:177(B)(2)(b) provides: “The legislature may express the intended meaning of a law in a duly adopted *concurrent resolution*, by the same vote and . . . according to the same procedures and formalities required for enactment of that law.” *Id.* (emphasis added). Given that there is no evidence in the record that St. James Parish adopted a resolution concurrently with the adoption of the land use plan

explaining that “unique situations requiring a location in water” are considered allowable uses in wetlands entitling applicants to a more lenient review, no valid legislative intent exists for the court to rely on.<sup>14</sup>

Thus, the district court should have applied *de novo* review to the Council’s interpretation of their ordinance and given it no deference. *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 3/9/22), 337 So.3d 534, 540 (“The proper interpretation of the language of a statute or Parish ordinance is a question of law requiring *de novo* review”).

The court states in its opinion that “courts will not and cannot substitute their judgment for that of legislative authority.” R. 27. But the court does just that, even though neither the ordinance nor any other form of extra textual evidence provides any indication that this pipeline—or any pipeline—falls under the subsection (f) standard of approval. The Parish’s claims that it intended subsection (c) to include “unique situation(s)” as specifically listed allowable use proves to be nothing more than a post hoc rationalization.

***C. The requirement that all proposed projects in Wetlands undergo the procedures mandated in § 82-25(e) does not lead to an absurd result.***

The district court’s stated grounds for not applying the plain language of the ordinance were that if it adopted Appellants’ interpretation and every project in the wetlands would have to undergo section (e) approval, “the potential for an absurd result would exist.” R. 28.

No such absurd result exists. Reviewing the pipeline expansion under Tier 3/section (e) does not create an inordinate burden on the Commission or the Council, nor does it prevent the Parish from approving a particular use in

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<sup>14</sup> The Planning Commission’s resolution approving the Koch application, and the accompanying minutes, do state that the Parish’s counsel advised the Commission that the unique situation circumstances make the Koch pipeline an allowable use. R. 247-248. The district court referenced this language. R. 28. However, this interpretation by Parish’s counsel, and the Commission’s adoption of that interpretation, ***at the time of approval of the Koch application*** is not legislative intent. *See* La. R.S. § 24:177(B)(2)(b).

Wetlands. Instead, it adds additional layers of protection for an area that the ordinance clearly sought to protect. Heightened scrutiny for development in wetlands is consistent with the policy and procedures set out in the Parish's own code of ordinances *See, e.g.*, Ord. Art. II § 18-163 *et seq.*, as well as with other actions that federal and state governments have taken to preserve these areas, *See, e.g.* 40 C.F.R. Part 230 (detailing guidelines under 404(b) of the Clean Water Act); La. Admin. Code tit. 43, pt. I, § 723 (Louisiana regulations for Coastal Use Permits). *See* La. Civ. Code art. 13 ("Laws on the same subject matter must be interpreted in reference to each other.").

Indeed, it would be more absurd to find that an industrial project like a pipeline could go in wetlands without the need for the Parish to first affirmatively find that the use is compatible with surrounding uses and that adverse impacts of the use are inconsequential. Ord. Art. II, § 82-25(e).<sup>15</sup> Yet that is the interpretation that the Parish proposed and the district court adopted here. But requiring a finding that a nonallowable use would result in a "compelling public benefit" further demonstrates the Parish's intent that the positives of the project must outweigh the negatives of disturbing an already fragile ecosystem.

The district court's interpretation that a "unique situation requiring a location in water" constitutes a use "specifically listed as allowable" leads to its own absurd results. For instance, a company wanting to construct a pipeline in a Commercial land use area would be forced to face Tier 3/section (e) review because the ordinance does not specifically list pipelines as an allowable Commercial land use. But a pipeline project in sensitive wetlands would bypass the stricter subsection (e) review if classified as a "unique situation." A pipeline project in Wetlands would therefore receive *less* scrutiny than the same project in

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<sup>15</sup> It is not inconsequential that such findings, for a pipeline running through wetlands, are not a foregone conclusion.

the Commercial land use category. With the exception of “Water,” no other land use category mentions the carve-out for unique situations. Therefore, the Commission is attempting to reinterpret what is supposed to be a limited carve-out for unique situations as encompassing any and all uses (despite the fact that they are not “specifically listed” as allowable for Water and Wetlands) to provide for less review. This reinterpretation creates a broad and amorphous category of allowable uses that exempts such projects from more stringent review *only* in Wetlands and Water. Such a reading ignores clear direction from the ordinance that “wetlands areas should remain unoccupied.” Even if this phrase were “aspirational”—which it is patently not—the district court’s interpretation of the ordinance would result in industrial projects in the wetlands receiving a lesser form of review than projects in other non-industrial areas. This disregards well-established policy that wetlands should have more protection than other areas, not less. Moreover, as noted above, the Parish has since abandoned this interpretation.

***D. The Planning Commission’s erroneous treatment of the Koch Methanol pipeline as an allowable use in a Wetlands area resulted in neither body making mandatory affirmative findings, rendering the decision void.***

The Planning Commission and Council violated § 82-25(e) of the Land Use Ordinance when they approved the Koch Methanol project without either body making any of the affirmative findings required by the ordinance. Louisiana courts have found that where a Parish Council fails to properly make and document required findings in support of a permitting decision, the underlying permit decision must be revoked. *Oakville Cmty. Action Grp. v. Plaquemines Par. Council*, 2008-1286, p. 8 (La. App. 4 Cir. 2/18/09), 7 So.3d 25, 29-30. For uses not specifically listed as allowable, section (e) states that “the parish council shall not approve a use under this subsection unless it makes affirmative findings that there is a *compelling* public benefit [and] that the use is compatible with surrounding uses and adverse impacts of the use are *inconsequential* . . . .” Ord. Art. II § 82-

25(e) (emphasis added). Because the Parish did not apply section (e), the correct approval process for this project, neither body made these critical affirmative findings. This renders the Commission's approval, as well as the Council's, void.

This error is consequential. Even though the Commission applied the section (h) factors in its approval of the project, those components are not as stringent as the mandatory findings of section (e). Section (e) sets a higher burden for approval than the considerations in section (h), which is exactly what would be expected when Industrial infrastructure like a pipeline is going into a sensitive area like the Wetlands with which it does not conform. Whereas section (h) requires weighing whether the public benefits of the project are commensurate with the impacts, section (e) states that the Parish must find that the project has a "compelling" public benefit and a finding that "adverse impacts of the use are inconsequential" before the Parish can approve the use. Ord. Art. II § 82-25(e). This would have been no small hurdle in the case of Koch Methanol's project, where the expansion would significantly increase emissions of pollutants that the Environmental Protection Agency (EPA) has singled out for federal regulation due to their proven connection to severe illnesses. R. 255. Finally, section (e) also requires a finding with no counterpart in the (h) factors: "that the use is compatible with surrounding uses." *Id.* Once again, this would be a significant hurdle for Koch Methanol, given that an ethane pipeline with its potential for ruptures is hardly compatible with sensitive wetland areas. R. 583.

These standards differ significantly and purposefully, and the use of one section versus the other could impact whether or not the Parish approves a project, or what findings are required to support an approval and withstand an arbitrary and capricious challenge. These mandatory findings in section (e) are not perfunctory. They serve an important purpose: ensuring that projects in sensitive and protected areas contain sufficient benefits and minimal harm for the community. Moreover,

they force project applicants to support their claims with evidence that their projects will strongly benefit the Parish and all of its residents. This ensures transparency of the approval process and accountability for officials who decide that a certain project will be in the best interest of their constituents.

**IV. The St. James Parish Council's failure to apply a standard of review to Koch's land use application invalidates its approval of the Project.**

The Parish Council failed to apply any discernible legal standard to its review of the Koch project on appeal, rendering its decision unconstitutional. Section 82-25(h) of the Land Use Ordinance outlines specific factors that must guide the Parish's evaluation of such projects, including the consideration of environmental impacts and public benefits, and Appellants' position is that these are the standards that the Ordinance required the Council to apply. Ord. Art. II § 82-25(h). However, not only did the Council neglect these criteria, it applied no criteria at all. The Council's failure to apply any standard to its decision renders its decision arbitrary and capricious, sidestepping the constitutional requirement for a fair and reasoned decision-making process.

***A. The Parish Council neglected to apply a standard to its decision to approve the Koch project, rendering its decision unconstitutional and arbitrary and capricious.***

Louisiana courts have consistently held that ordinances governing permits must include clear and definite standards to ensure uniform application, prevent arbitrary decision-making, and uphold constitutional due process protections.

The Louisiana Supreme Court has addressed this issue in the context of zoning ordinances:

A zoning ordinance which contains no standard for the uniform exercise of the power to grant or deny applications for permits is unconstitutional. To be constitutional, a zoning ordinance must be sufficiently definite to notify citizens of their rights pursuant to the ordinance and must establish sufficiently definite and adequate standards to govern officials with respect to the uniform treatment of applications for permits under the ordinance.

*Summerell v. Phillips*, 282 So.2d 450, 453 (La. 1973) (citing United States Constitution, Amendment V and Amendment XIV; Louisiana Constitution of 1921, Art. 1, § 2); *Gaudet v. Economical Super Market, Inc.*, 112 So.2d 720 (1959) (holding that a zoning ordinance is invalid if it lacks clear and adequate guidelines for granting variances, exceptions, or permits, and to be valid, must be so defined and limited that both citizens and the zoning board may know with certainty their rights, privileges and powers under the ordinance); *McCauley v. Albert E. Briede & Son*, 90 So.2d 78 (La. 1956) (“To allow the granting or refusal of special permits by officials without any standard to guide them denies equal protection of the law and is invalid”); *State ex rel. Dickson v. Harrison*, 108 So. 421 (La. 1926) (the ordinance at issue “prescribe[d] no uniform rule of action, applicable to all similarly situated, under which the council [was] to act in granting or withholding permits . . . because of this objectionable feature, [the ordinance was] unconstitutional”).

Here, the Council made its decision unguided by any standard. This is corroborated by the Parish’s position before the district court and evidenced in the transcript of the Council’s appeal hearing. Before the district court, the Parish denied that the Council had to make the affirmative findings in subsection (e), R. 147, denied that the Council had to consider the (h) factors on appeal, R. 997-998, and otherwise offered no standard that applies to the Council considering the matter on appeal. R. 998-1006.<sup>16</sup>

Notably, at oral argument the district court recognized the problem of what standard the Parish Council applies on appeal, even acknowledging that issue as the “ultimate determination [or at least one determination] that this Court is going

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<sup>16</sup> A review of this portion of Parish counsel’s argument is enlightening in this regard, as counsel is all over the place when asked by the court what the standard is. R. 998 (“An easy answer to that does not exist”); R. 999 (“It’s a grey standard”); R. 1002 (“[I]t is an arbitrary and capricious standard,” but “they can elect to do de novo review if they want to and weigh the facts.”).

to have to make.” R. 1000-1001 (discussing question of “Under what standard did the Parish Council have to review the decision of the Planning Commission”?).

However, the court never decided that key question. R. 26-30.

Lacking the guidance an objective standard would have provided, the record of the appeal hearing reflects that Councilmembers instead based their decision on personal feeling, experience, and irrelevant facts. R. 102-115.<sup>17</sup> At no time during their deliberation did the Council articulate a standard, before voting unanimously on a motion to reject the appeal. R. 115-116.

This form of standardless review violates the due process rights of the Appellants by failing to provide a fair, standardized review process as required under both U.S. and Louisiana law. The requirement of an explicitly applied standard ensures uniform application of the law and protects citizens’ rights by preventing arbitrary decision-making, and it is for exactly this reason that courts insist local bodies be guided by standards. *See, e.g., McCauley*, 90 So.2d at 82 (La. 1956) (“[I]t is a fundamental rule, fully applicable to zoning ordinances, that an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases”). Further, ordinances that are devoid of a standard upon which an elected body exercises its police power are unconstitutional. *See Morton v. Jefferson Par. Council*, 419 So.2d 431, 434 (La. 1982) (“[A] zoning ordinance which contains no standard for the uniform exercise of the power to grant or deny applications for permits is unconstitutional”).

In failing to apply a standard to its decision on the Koch application, the Council failed to establish standards “sufficiently definite to notify citizens of their

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<sup>17</sup> Indeed, some Councilmembers eschewed their responsibilities to consider health, safety, and welfare entirely, placing the onus instead on residents: “Why don’t y’all buy the property so that [industry] can’t locate”? R. 739. This attitude was repeated in the Parish’s brief before the district court, wherein it stated that if the Appellants wanted their viewpoint represented, their recourse is to “get [themselves] appointed to the planning commission” or be elected to the Council. R. 824.



rights pursuant to the ordinance.” *Summerell*, 282 So.2d at 453. The Council’s decision was arbitrary and capricious, violating constitutional protections.

***B. The applicable standard for the Council’s decision is the (h) factors.***

Though the Council did not apply a standard, the land use plan provides and requires a standard for the Council to apply: the standards articulated in § 82-25(h). For this reason, Appellants are not arguing the ordinance is unconstitutional for lack of a standard that guides the Council in land use appeals, as the Parish misstated before the district court. Rather, Appellants’ position is that the proper interpretation of the ordinance, both based on its plain language and to ensure it meets constitutional standards, is that the Council must consider the (h) factors on appeal.<sup>18</sup>

The (h) factors require the analysis of five factors: 1) the physical impacts of a proposed project on the air, water and land; 2) the environmental impacts of a proposed project on the air, water, and land; 3) the public benefits of a proposed project; 4) whether those benefits are at least commensurate with the impacts; and 5) whether the environmental impacts may impair the ability of the parish to attract other beneficial development. Ord. Art. II, § 82-25(h). Of these, the record reflects the Council only considered public benefits. R. 730-743. Most notably absent is consideration of whether the benefits of the Project are at least commensurate with the impacts.

Both the language of the ordinance and the facts here dictate a conclusion that the Council was required to consider the (h) factors when deciding Koch’s application on appeal. First, as noted in Argument I, the Tier 3/section (e)

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<sup>18</sup> Appellants do not argue that the Council necessarily must put its consideration of the (h) factors on the record the way that the Commission did, though that would be the best practice to demonstrate that it followed its own procedures. Here, however, there is a record reflecting what the basis of the Council’s decision was, and it was factors wholly outside of the (h) factors and outside of health, safety and welfare considerations. Much of it constituted whim and caprice. Additionally, as stated previously, the Parish’s position in court was that the Council did not need to consider the (h) factors.

procedure requires the Council to apply the (h) factors as its standard in reviewing the Koch application because it is the Council who makes the decision in the first instance. According to the third tier of review enumerated in § 82-25(e), the Commission's decision was at most a recommendation for Council consideration.

However, even if the project falls under Tier 2/section (f), as the Parish argues, the (h) factors must still be considered by the Council. The Parish admits that the (h) factors must be considered by the Planning Commission when a project falls under (f). R. 814, 823. But the plain language of (f) hands the responsibility for approval to “the parish council on appeal.” Ord. Art. II, § 82-25(f). Thus, here, the Council was obligated to consider the (h) factors. To conclude that the Council had no such duty would render “or by the parish council on appeal” meaningless—a conclusion that is contrary to statutory construction under Louisiana law.

*Louisiana Workers' Comp. Corp. v. Landry*, 2011-1973, p. 8 (La. App. 1 Cir. 5/2/12), 92 So.3d 1018, 1023 (courts shall “not give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided”).

Further, given the amount of new information from both parties in the appeal to the Council that was not presented before the Commission, independent consideration of the (h) factors—rather than an unstated, post hoc reliance on the Planning Commission decision—was imperative to the Council's ability to fairly decide Appellants' appeal. Koch submitted a new application in the time between the Commission's initial findings and the Council's review of Petitioners' appeal. R. 366-523 (Sept. 22, 2023, application). That supplemental application contained substantial new information material to whether the Project met the required factors under § 82-25(h).<sup>19</sup> Appellants, similarly, presented much new information that the Commission did not have; indeed, Appellants' entire appeal was new

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<sup>19</sup> For example, Koch added missing application information and included its entire Environmental Assessment Statement submitted to DEQ in support of its air permit. R. 366-367, 378-383, 412-546.

information.<sup>20</sup> To decide on these new issues, the standard must be (h)—the only ordinance-contemplated standard—regardless of whether the Council reviewed the project under (e) or (f).

***C. The Council did not apply the (h) factors, and by neglecting to do so, the Parish effectively violated its own ordinance.***

The Council’s failure to apply the mandatory (h) factors is a clear procedural violation that invalidates its denial of Appellants’ appeal and exemplifies arbitrary and capricious decision-making contrary to the requirements of the ordinance. The record shows that the Council did not follow its own procedures (*i.e.*, applying the (h) factors mandated by the ordinance). Failure to follow such procedures is arbitrary and capricious under the law and is not afforded deference by courts.

*Kaltenbaugh v. Bd. of Supervisors*, 2018-1085, p. 18 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145 (holding that where the Southern University of New Orleans did not follow its own binding procedures, its decision was arbitrary and capricious, and not entitled to deference).

Before the district court, the Parish essentially acknowledged that the Council did not apply the (h) factors. It argued that only the Commission had to apply the (h) factors, R. 997-998, and the Council on appeal could, or it could not. R. 975-76. Either is permissible according to the Parish. But the record contains no indication that the Council reviewed the Commission’s decision, under any standard.

Because the Council *must* apply the (h) factors on appeal, this admission establishes a clear failure to follow a mandatory procedure. Such a failure to follow

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<sup>20</sup> This information included evidence of disproportionate impact substantiated by EJSscreen evidence, R. 258; evidence that Koch conceived of this as an “automation” project, which casts doubt on jobs promises, R. 547-549; evidence that approval of this project would put the Parish close to “non-attainment” status under the 1-hour NAAQS for NO<sub>2</sub>, R.549-50; evidence of the toxicity of certain heavy metals newly included in the permit R. 254-55; evidence of the Facility’s history of violations of its air permit. R. 256-57; 548; and the lack of emergency evacuation routes in the event of an accident. R. 258-59.

proper, required procedure renders the Parish’s action unlawful and *ultra vires*.

*Oakville Cmty. Action Grp.*, 7 So. 3d at 29; *Folsom Rd. Civic Ass’n*, 425 So.2d at 1320. Such a failure is also the very definition of arbitrary and capricious. See *Kaltenbaugh*, 291 So.3d at 1142.

### CONCLUSION

For the foregoing reasons, Appellants ask this Court to reverse the decision of the district court, vacate the Parish approval of the Project, and remand to the Parish for proceedings consistent with the Court’s opinion.

Respectfully submitted this 16th day of December 2024:

/s/ Pamela Spees

Pamela C. Spees  
Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012  
Tel. & Fax: 212-614-6461  
Email: [pspees@ccrjustice.org](mailto:pspees@ccrjustice.org)  
*Counsel for Inclusive Louisiana  
and Mt. Triumph Baptist Church*

/s/ Lisa W. Jordan

Lisa W. Jordan, Director  
Clara Potter, Supervising Attorney  
Tulane Environmental Law Clinic  
6329 Freret Street, Suite 130  
New Orleans, LA 70118  
Email: [lwjordan@tulane.edu](mailto:lwjordan@tulane.edu)  
Direct: 504-314-2481  
Main: 504-865-5789  
*Counsel for Ms. Beverly Alexander and  
RISE St. James and as supervising  
attorneys for Ms. Derbonne’s and Mr.  
Polites’ representation of Beverly  
Alexander*

Laura Derbonne, Student Attorney  
Tom Polites, Student Attorney  
Tulane Environmental Law Clinic  
*Counsel for Ms. Beverly Alexander*

### CERTIFICATE OF SERVICE

I hereby certify that an electronic copy of the above brief, with appendices, was served on all counsel of record by email this 16th day of December, 2024, as follows:

Counsel for Appellee St. James Parish:

BUTLER SNOW LLP  
Victor Franckiewicz

Counsel for Appellee Koch Methanol:

LISKOW & LEWIS, APLC  
Neil Abramson  
Greg L. Johnson

Email:  
vic.franckiewicz@butlersnow.com

James Breaux  
Clare M. Bienvenu  
Email: nabramson@liskow.com  
Email: gljohnson@liskow.com  
Email: jlbreaux@liskow.com  
Email: cbienvenu@liskow.com

/s/ Lisa Jordan  
Lisa W. Jordan

# Appendix A

## INTRODUCTION OF STUDENT ATTORNEYS

Undersigned counsel respectfully introduces student attorneys Laura Derbonne and Tom Polites to this Court pursuant to Louisiana Supreme Court Rule XX. As the student attorney's supervising attorney, I approve of these student attorneys' appearance in this matter on behalf of Ms. Beverly Alexander. Ms. Alexander's written consent to student representation can be found at R.51.

/s/ Lisa Jordan

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Lisa Jordan  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, Louisiana 70118  
Telephone: (504) 862-8818  
lwjordan@tulane.edu

FILED FOR RECORD  
ST. JAMES PARISH, LA

TWENTY-THIRD JUDICIAL DISTRICT COURT 2024 JUN 18 PM 1:44

FOR THE PARISH OF ST. JAMES

CLERK OF COURT

STATE OF LOUISIANA

BY: \_\_\_\_\_

DOCKET NO. 41903

DIVISION "B"

**BEVERLY ALEXANDER  
RISE ST. JAMES; INCLUSIVE LOUISIANA  
and  
MOUNT TRIUMPH BAPTIST CHURCH  
by and through their members**

VS.

**ST. JAMES PARISH**

FILED: June 18, 2024

Shaw W. [Signature]  
CLERK OF COURT

**JUDGMENT**

This matter came before the Court on the 8th day of April, 2024, pursuant to Plaintiffs', Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church, Petition for Judicial Review filed on October 27, 2023.

PRESENT IN COURT: Lisa Jordan, Charlotte Phillips, Andrea White, and Astha Sharma Pokharel, Attorneys for RISE St. James and Beverly Alexander;  
  
Victor Franckiewicz and Adam Koenig, Attorneys for St. James Parish; and  
  
Neil Abramson, Clare Bienvenu, Attorneys for Defendant, Koch Methanol St. James, LLC.

After the hearing occurring in open court on the date aforementioned, the Court requested the parties submit post-hearing memorandums on certain issues and took all matters under advisement.

Considering the law, the evidence, the arguments of the parties, and the entire record of this matter, and for the written reasons assigned herewith;


**IT IS ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church request to reverse the September 27, 2023, decision of the Council granting Koch Methanol St. James, LLC's land use application for its proposed project is hereby **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church request to remand the matter to the Council for additional consideration under Art. II, § 82-25 of the Land Use Ordinance is hereby **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church request to stay the effectiveness of the Koch Methanol St. James, LLC's land use approval pending final resolution of this appeal is hereby **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Plaintiffs' Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church request to issue injunctive relief vacating the Parish's approval of Koch Methanol St. James, LLC's land use application is hereby **DENIED**.

**JUDGMENT READ, RENDERED, AND SIGNED** in Convent, Louisiana on this 18<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
**CODY M. MARTIN**  
**DIVISION "B"**  
**JUDGE – 23<sup>RD</sup> JUDICIAL DISTRICT**

**PLEASE NOTIFY:**  
ALL PARTIES



FILED FOR RECORD  
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CLERK OF COURT  
BY: \_\_\_\_\_

TWENTY-THIRD JUDICIAL DISTRICT COURT  
FOR THE PARISH OF ST. JAMES

STATE OF LOUISIANA

DOCKET NO. 41903

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RISE ST. JAMES; INCLUSIVE LOUISIANA  
and  
MOUNT TRIUMPH BAPTIST CHURCH  
by and through their members

VS.

ST. JAMES PARISH

FILED: June 18, 2024

[Signature]  
CLERK OF COURT

REASONS FOR JUDGMENT

BACKGROUND:

In the above captioned matter, Plaintiffs have requested judicial review of the St. James Parish Council's ("Council") 09/27/23 decision to approve Koch Methanol St. James, LLC's land use application to expand its industrial operations ("the project") in District 5 of St. James Parish. The Plaintiffs allege the approval would allow Koch Methanol to substantially increase its permitted emissions of harmful air pollutants and allow for expansion into an area identified as Wetlands. Alexander and members of the Petitioner groups live in District 5 where the Koch Methanol facility is located and allege they will be exposed to the air pollutants that the facility emits, including the increased emissions from the proposed Project. On 07/12/23, Koch applied for a Land Use Permit with the St. James Parish Planning Commission ("Commission"). In its application, it sought approval to expand production at its current production facility and amongst other improvements, install a pipeline and access road through wetlands to convey ethane to the facility. Koch's application was approved by the Planning Commission on 07/31/23. On 08/30/23, Plaintiffs appealed the Commission's decision to the St. James Parish Council. Following notice of that appeal, Koch submitted a new application for land use approval on 09/22/23, to the Council for review. A public hearing was held on 09/27/23. The Council voted to reject Plaintiffs' appeal, and Plaintiffs contend that the subsequently published minutes from the meeting did not reflect any findings or reasons for decision. Plaintiffs now seek judicial review from this Court

concerning the procedure followed by and decision rendered by the Parish entities during the above-described governmental/public consideration process. Koch Methanol has intervened in the above captioned matter as an interested party.

### **SUMMARY OF ARGUMENTS**

The following portion of this Court's Reasons for Judgments will consist of this Court's summary of the arguments, references to exhibits, case law cited by the parties; as well as citations to additional case law as determined by this Court to be relevant in deciding the matters before it. It is important to note that in reading this section of this Court's Reasons for Judgment, any statements or assertions made are those of the parties to the proceeding and not the analysis of the Court on the contested issues:

### **PRE-HEARING BRIEFING:**

#### **PLAINTIFF'S BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW- (PRE-HEARING)**

- Because St. James Parish officials did not follow their own Land Use Ordinance when they granted Koch's request to expand its operations – including into local wetlands – Plaintiffs request that the Parish's permitting decision be vacated.
- Instead of approving Koch's application, the Commission should have referred it to the Council with a recommendation for its consideration as required by § 82-25(e).
- Koch's proposed expansion included the construction of a pipeline and an access road through land designated as Wetlands under § 82-25(c).
  - o Subsection (c) does not specifically list any allowable uses in wetlands, requiring that wetland areas should remain unoccupied except for unique situations requiring a location in the water. § 82-25(c).
  - o § 82-25(e) lays out a process for situations for uses that are not "allowable" under subsection (c) and would be prohibited.
- The Parish argues that subsection (f), which doesn't require approval by the Council, applied to Koch's application.
  - o However, subsection (f) only applies to uses of land that are allowed under subsection (c).
- The Council violated Art. II, § 82-25(e) of the Land Use Ordinance and acted arbitrarily and capriciously when it sustained the Commission's approval of the project without making the affirmative findings that there is a compelling public benefit, that the use is compatible with surrounding uses, and that adverse impacts of the use are inconsequential.
- The Council acted arbitrarily and capriciously when it did not apply, on the record, the mandated factors of the Ordinance to the Koch proposal.
  - o Even if a proposed use fits within an allowable use under subsection (d), if the proposed commercial or industrial development requires a state air permit, the Commission, or the Council on appeal, is required to undergo a more extensive review under § 82-25(h) before it has the discretion to approve the permit.

- Five factors to consider under (h)(3).
- Koch submitted a new application in the time between the Commission’s initial findings and the Council’s review of Petitioners’ appeal – which contained substantial new information material to whether the project met the required factors under § 82-25(h)(3).
- The Ordinance also mandates the Council to consider “whether the public benefits of the proposed use are commensurate with those impacts.” § 82-25(h)(3), which requires a balancing approach when the Council is making land use decisions on appeal.
- The Parish acted arbitrarily and capriciously when it relied on political considerations, irrelevant facts, and extra-legal reasoning that had no relationship to Koch’s land use proposal or to the consideration of factors required for approval.
- Had the Parish performed the balancing analysis, the evidence in the record would not support a finding that the public benefits are commensurate with environmental impacts.
  - Environmental impacts are substantial.
    - The project would significantly increase emissions of nearly all criteria pollutants and more than a dozen toxic air pollutants.
    - Health impacts include: lung cancer, leukemia, respiratory disease, brain and nerve damage, kidney damage, and birth defects toxic metals.
    - Project would expand permitted emissions of toxic heavy metals such as arsenic, barium, cadmium, chromium, cobalt, copper, manganese, mercury, nickel, and zinc.
    - Koch’s violations of its environmental permits.
  - Public benefits are minimal.
    - Koch suggests that the project can create two permanent jobs.
    - Not only are these jobs not promised, but there is no guarantee that these positions will be filled by members of the community.
    - Only 25% of St. James Parish residents.
    - Koch claims that it would also provide 400 construction jobs, but those would only exist during the 5-year construction period.
  - Tax benefits have also been drastically reduced.
    - Koch applied for and received an industrial tax exemption (ITEP), exempting the company from paying more than \$7,000,000 in taxes for the project over the course of 10 years.

**ST. JAMES PARISH’S BRIEF IN OPPOSITION (PRE-HEARING)**

- Petitioners’ appeal was heard at the 09/27/23 meeting. After presentations from both Petitioners and Koch and hearing public comments, the Council unanimously voted to reject the appeal.
- **Standard of Review:** Issues for appellate review:
  - Whether the 1,000 ft. of 8” pipe to be located in wetlands requires the Parish to apply the heightened level of scrutiny for approval – this presents an interpretation of the language of the Ordinance and is a question of law.

- Whether the decision of the Commission had a rational basis, both as to whether the pipe is a “unique situation” so as to be an allowable use and the balancing of the approval considerations in § 82-25(h) of the Land Use Ordinance for approval.
- Appellants have burden of proof to show by a preponderance of the evidence that the decision has no substantial relationship to public health.
- The Land Use Ordinance sets up a **3-tier system**, each with a different level of scrutiny to apply when considering a project. A major aspect of appeal is a determination as to whether the 2<sup>nd</sup> or 3<sup>rd</sup> tier applies to the project.
- The **2<sup>nd</sup> tier** was applied to the Koch Methanol project. That is, when a project is large enough (e.g., 3 acres or more), or requires certain state or federal permits, the project is subject to additional scrutiny under § 82-25(f), even if it is expressly allowed as a use in a designated area.
  - Projects in the 2<sup>nd</sup> tier cannot be approved administratively through the building permit system – instead, they are elevated to the Commission for approval.
- The **3<sup>rd</sup> tier** applies where a project is prohibited in its location by virtue of the allowable uses in § 82-25(c). The 3<sup>rd</sup> tier requires a more extensive public vetting and approval process in which the Commission does not have the power to approve the project.
  - Instead, the Commission makes a recommendation to the Council, which alone has the authority to approve or deny a project when it would otherwise be prohibited.
    - 3<sup>rd</sup> tier imposes additional scrutiny than what the 2<sup>nd</sup> requires.
  - The Land Use Ordinance prohibits approving a project that falls into the 3<sup>rd</sup> tier unless it can satisfy one or more of 3 criteria that both the Commission and the Council are required to make affirmative findings.
- Because the pipeline (and the project as a whole) requires state and federal permits, its consideration is elevated to 2<sup>nd</sup> tier. The question of whether the project is an “allowable use” turns on whether the 1,000’ stretch of 8” ethane pipeline is allowable in a category under subsection (c). § 82-25(c)(11) admonishes that wetlands should be left undisturbed, except for “unique situations requiring a location in the water” (which is labeled an “allowable use”). Because the only way to connect to a pipeline in the wetlands is to go through wetlands, the Commission determined that the 1000 feet of pipeline is a unique situation requiring a location in the water.
  - § 82-25(c)(11) allows limited uses in the wetlands, subject to any permits required under Article V, Chapter 18, which is a reference to the Coastal Zone Resource Management Program. This was the commission’s interpretation:
    - “The commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein. Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located an area designated as Wetlands in the land use plan, such pipeline connection being a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located in the Wetlands area, in accordance with ordinance § 82-25(c)(11). The Commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.”
- An “on the record” recitation of the Council’s reasoning is not a requirement of the Ordinance.
  - The Commission considered the factors mandated in § 82-25(h):

- “The Commission finds that approval is appropriate under ordinance § 82-25, with specific reference to the factors in § 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.”

**KOCH METHANOL’S BRIEF IN OPPOSITION (PRE-HEARING)**

- The proposed projects are facility updates that: (1) do not constitute the establishment of new industry in St. James Parish; (2) allow the existing facility to remain competitive while confining construction to the existing facility footprint (with the exception of piping and an associated access road needed to tie into an existing third-party ethane pipeline; (3) maintain air emissions within standards protective of human health, based on voluntary and conservative permitting principles; and (4) provide public benefit to the community in terms of revenue and employment.
- The record reflects that the Commission and Council were aware of the objectives and need for the proposed projects, as well as fact that the projects would be constructed within the existing footprint, except for the pipeline tie-in.
- Koch voluntarily asked LDEQ to undertake review of its air permit application under the Prevention of Significant Deterioration (PSD) program.
- Data in the record shows that the *total* emissions of the facility post-projects, not just emission increases from the projects, were modeled and that modeled health impacts are all below applicable standards.
- Koch presented facts to the council indicating that actual air emissions in St. James Parish had significantly decreased over time.
  - LDEQ data shows that the overall level of air emissions in St. James Parish has decreased significantly since 2015.
  - Mobile air monitoring conducted within the parish and within the vicinity of the Koch Methanol facility on three separate occasions showed pollutant levels below the expected ambient air quality standards.
  - Koch has also voluntarily committed to installing a fence line monitoring system that will monitor volatile organic compounds (VOC) or methanol.
- Koch’s environmental justice analysis showed that toxic compounds would not have an adverse impact on the community.
  - The optimization project and oxygen backup project, valued at a total investment of approximately \$185 million, will bring an increase in tax revenue to Louisiana and St. James Parish in the form of property, inventory, franchise, and sales tax.
    - Koch’s investment in these projects will represent a revenue increase for the parish of approximately \$3.9 million of property tax over the next ten years and approximately \$2.3 million in sales and use for machinery equipment purchase.
    - Koch ensures the retention of the existing 114 jobs.
    - Expected to create 400 temporary jobs and 2 new permanent direct jobs.

- The Council was not required to apply the § 82-25(h) factors “on the record.”
  - o The Commission reasoned that “approval is appropriate under ordinance § 82-25, with specific reference to the factors described in § 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.”
- The Council was not required to grant the appeal based on factor 3 alone.
  - o No single factor is controlling of the ultimate decision.
  - o The Commission discussed factors 1 and 2 in the resolution.
    - The Commission found as to the first factor that “the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses in industrial areas.”
    - As to the second factor, that “the project would retain existing jobs while providing new job opportunities and would expand the tax base with the value of additional facilities.”
    - As to the third factor, the Commission found, “such benefits outweigh the relatively modest physical and environmental impacts without impairing the Parish’s ability to attract other beneficial development by virtue of the project’s location in an industrial area and its distance from potentially impacted uses.”
  - o The Commission sought advice from parish legal counsel on application of the Land Use Ordinance to Koch’s project.
    - Parish legal counsel opined that because the “pipeline connection is such a unique situation requiring a location in a wetlands area because the existing ethane pipeline to which the connection will be made is already located there, the circumstances here make the pipeline an allowable use under ordinance § 82-25(c)(11).”

**PLAINTIFFS REPLY BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW (PRE-HEARING)**

- The Parish’s land use decisions have landed the 5<sup>th</sup> District of St. James Parish in the 95<sup>th</sup> to 100<sup>th</sup> percentile nationwide for cancer risk and respiratory hazards from exposure to toxic air pollution, according to U.S. Environmental Protection Agency data.
- The project would entail a 25% expansion of the facility’s production capacity paired with a 75% increase in its permitted emissions.
- The Council must follow its own rules in making the decision that a use not “specifically listed as allowable” in a land use category must meet mandatory factors that increase the burden for approval.
- The Parish and Koch’s interpretation of the Ordinance would lead to an absurd result that is contrary to the purpose of the law.
  - o Their position would mean that land designated as “agriculture” would get more scrutiny from the parish if a company seeks to run a natural gas pipeline through it, than wetlands would, because although subsection (c) does not specifically list

pipelines as allowable under either land use category, the land use category “agriculture” does contain a specific list of other allowed uses.

- Even if construed as an allowable use project, the Ordinance still requires the Council to make the approval decision on appeal and apply the subsection (h) factors.
- Under § 82-25(f), because an appeal was brought, the Council had a mandatory approval role that it didn't meet.
  - o Alternatively, if the Court finds that subsection (c) could be construed as “specifically listing” industrial use as an allowable use in wetlands, then subsection (f) of the Ordinance would have been triggered (i.e., 2<sup>nd</sup> tier).
    - When there is an appeal, the Council must be the final arbiter, or approver, of the permitting decision.
  - o Given that the Parish has admitted that the Council did not approve the Koch application – characterizing its decision as having merely “denied the appeal” – the Parish has conceded that it did not follow subsection (f) procedures.
  - o The Parish’s position concedes Plaintiff’s argument: because the Parish describes the project as a subsection (f), 2<sup>nd</sup> tier project, and because it describes the (h) factors as “mandated” for the Commission, the Parish admits that the (h) factors must be considered when a project falls under subsection (f).
  - o The Council member’s statements at the end of hearing show that the Council was not applying *any* standard to the appeal.
- The record demonstrates that the Parish’s decision was procedurally improper and arbitrary and capricious.
  - o If the Council fails to memorialize its reasoning in the record, it opens itself up to an arbitrary and capricious challenge based on what it did put in the record.
- In the absence of the Council’s consideration, the Parish cannot now rely on the Commission’s purported conclusions on the environmental impacts of the proposal and the benefits and costs analysis.
  - o Whether the Commission properly met its duty under the Ordinance provides no guidance for how the Council should have treated Petitioners’ materials and Koch’s supplemented application on appeal.
    - The Commission did not have before it all of the evidence of the project’s environmental impacts when it reached its conclusion.
    - It was only through Petitioners’ appeal and Koch’s supplemental application that the full scope of the project’s environmental impacts entered the record.

#### **POST-HEARING BRIEFING:**

At the conclusion of oral arguments presented in open court on April 8, 2024, the Court requested Post-Hearing Briefing on the following specific issues (an abbreviated, high-level summary of the responses of each party is outlined under each question posed by this Court):

- 1) Whose decision is this Court determining whether or not the decision breached the arbitrary and capricious standard: the Council, the Commission, or both, and why?**

- a. **SUMMARY OF PLAINTIFFS' RESPONSE:** Because the Ordinance says that no use is ever *allowable* in wetland because no uses are specifically listed as allowable, the project was required to undergo the subsection (e) procedure regardless of which body makes the unique circumstances determination. If the Court agrees that subsection (e) governed, the second and third questions need not be answered. If the Court disagrees, it must review the Council's decision under the judicial arbitrary and capricious standard.
- b. **SUMMARY OF ST. JAMES PARISH'S RESPONSE:** Both the decision of the Commission and the Council (because the Council upheld the Commission's decision, there is only one decision to evaluate) under the arbitrary and capricious standard.
- c. **SUMMARY OF KOCH METHANOL'S RESPONSE:** The Ordinance itself is silent on the question. Regardless of which decision the Court reviews – the Council's or the Commission's – the result is the same.

**2) What standard does the Parish Council follow in an appeal of a Planning Commission decision, and what is the legal effect if that standard is not defined in the statute?**

- a. **SUMMARY OF PLAINTIFFS' RESPONSE:** Because the Council received substantial new information, the Council reviews the Commission's decision *de novo*, and does not owe the Commission any deference. The Council's review must have been guided by the subsection (h) standard.
- b. **SUMMARY OF ST. JAMES PARISH'S RESPONSE:** The Council is not limited to conventional judicial standards of review. It has broad legislative discretion in considering an appeal subject to constraints imposed by the Constitution, jurisprudence, the Parish's Home Rule Charter, and the Land Use Ordinance.
- c. **SUMMARY OF KOCH METHANOL'S RESPONSE:** The Council is vested with all legislative power in the parish, and this power includes the constitutional authority to enact land use regulations, create Planning Commissions, and review the Commissions' decisions.

**3) Who makes the determination as to whether a unique situation exists under the Wetlands provisions of subsection (c) of the Ordinance, and why does the party who makes it have the authority to make that decision?**



- a. **SUMMARY OF PLAINTIFFS' RESPONSE:** The Council, because of the Ordinance's language and because of the unique policy role that Council plays in administering local wetlands programs.
- b. **SUMMARY OF ST. JAMES PARISH'S RESPONSE:** Different parties are called to decide that point at different stages of the land use process.
- c. **SUMMARY OF KOCH METHANOL'S RESPONSE:** The Commission (which is charged with implementing the Ordinance via the Constitution, the Home Rule Charter, and the Ordinance itself), which is subject to Council review on appeal as provided in the Ordinance under the legislative prerogative standard.

**PLAINTIFF'S POST-HEARING BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW**

- The Court must first review the Commission's decision to treat the Koch application under subsection (f). If the Court determines that was the proper procedure, then it must additionally review the Council's decision.
  - o The question of whether subsection (e) or (f) applies, even where there is a "unique situation," is a legal question that the Court must decide.
  - o Because the Ordinance clearly mandates that the application follow subsection (e) procedures and because the Commission did not apply the proper procedures, the decision to grant Koch's land use application must be reversed, and the Court need not review the Council's decision on appeal.
    - If the Court disagrees and finds that the Commission properly applied subsection (f) procedures, then it must review the Council's decision on appeal as to whether it was arbitrary and capricious.
- **The court must initially review the Commission's decision.**
  - o The Court must review the Commission's decision to classify the land use application as a use "specifically listed as allowable" under § 82 25(f).
  - o The Council saw itself not as the approver of the application, as it should have been, but instead saw the Commission as the approver and itself merely as a decider of Petitioners' appeal.
  - o If the Commission followed the wrong procedure in not forwarding the land use decision to the Council for approval, then the Parish land use approval must be reversed.
  - o In *Kaltenbaugh v. Bd. of Supervisors, Southern Univ.*, 18-1085, p. 18 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145, the Fourth Circuit confirmed that a governmental body's failure to follow mandated procedures is per se arbitrary and capricious.
  - o The question of whether Koch's project is a unique situation requiring location in water is irrelevant to the question of whether the Commission followed the proper procedures.
    - Even if Koch's project is a unique situation and even if the Commission is the body authorized to make that determination, subsection (f) was still the

wrong procedure to follow. Because there are no “specifically listed” allowable uses in Wetlands in the Ordinance, any use—even a unique situation requiring a location in water—must proceed under subsection (e).

- **Alternatively, the Court must review the Council’s decision as to whether it constituted arbitrary and capricious.**
  - If the Commission properly applied the (f) factors, then was the Council’s rejection of the appeal arbitrary and capricious?
  - The Ordinance designates the Council as the final approver on appeal.
    - Subsection (f) provides: “The following uses or activities shall not be issued a building permit until approved by the planning commission (*or by the parish council on appeal*).”
  - Under the facts of this case, the Council’s decision is separate from that of the Commission and is independently reviewable by this Court.
    - Even if the Ordinance was not clear that the Council must be the approver on appeal, the facts of this case require the Council to be treated as the approver because of the new and very different information available to the Council.
    - Significant new information was before the Council that was not before the Commission. Petitioners submitted substantial information as part of their appeal, and after Petitioners’ appeal, Koch resubmitted its land use application with information it had not presented to the Commission.
      - Petitioner’s new information included: a chart from Koch’s LDEQ permit application making clear that its Project would increase the facility’s emissions of criteria pollutants substantially to significant levels (by no means the “relatively modest” amounts cited by the Commission) and the associated health effects; how much tax revenue the Parish was losing due to Koch’s ITEP exemption; how Koch had not hired near the amount of people it estimated for its ITEP exemption, that 75% of its employees reside outside of St. James Parish, and that it described its Project as an “automation” project on its website; how far away the nearest criteria pollutant air monitors are; Koch’s history of repeated air and water quality violations; the presence of the neighborhood of Barras Street on the facility’s southeast side, in a Residential Growth area; the fact that Koch’s air modelling results demonstrated that Koch’s air emissions after the expansion Project would bring the Parish very near nonattainment levels for NO<sub>2</sub>; the fact that methane and ethane are both highly flammable and the latter would be newly introduced on site as a result of the Project; the evacuation issues in the Parish, the fact that Koch’s 2-mile impact area from an accident crosses both River Road and Highway 3127, examples of methanol explosions from other facilities, and the fact that Koch’s trains sit on the railroad blocking egress; Koch likely would not make the information from its fence-line monitoring system available to the public, that the system would measure for VOCs even though there is no legal limit for VOCs in the air, and the system’s methanol measurements would be compared to an absurdly high state limit.
    - Koch’s new information presented to the Council but not to the Planning Commission included information that is required for its application under the Ordinance.

- § 82-25(g)(3)(b) requires industrial applicants to provide a list of all substances that are anticipated to be present on the site, along with the anticipated quantities of such substances.
  - Koch had only given a list of hazardous substances; it had not listed the quantities of those substance. The project would introduce a new hazardous substance on site – ethane – and would increase the amounts of methanol and ammonia.
  - This information is relevant to the (h) factors that the Commission was not given.
    - Given that the Council had all of this new information, it makes no sense for the Court to ignore the Council’s decision and only review the Commission’s decision – made on a substantially different record – for arbitrary and capricious action.
- With the Ordinance silent as to the standard the Council must apply on appeal of a Commission decision, and under the facts of this case, the Council must review the appealed Koch Methanol land use decision *de novo*.
- The standards that guide decision making by any entity under § 82-25(f) appear in § 82-25(h).
  - The Council did not apply the (h) factors. The Parish did not argue that it did apply the (h) factors in its briefing.
  - At the hearing, the Parish reaffirmed its position that the Council did not have to consider the (h) factors: “The ordinance does not say that the Parish Council has to consider and make findings on Section H, Subsection H.”
    - The Parish was legally required to apply these factors as part of its *de novo* review.
- When reviewing a Commission decision on appeal under § 82-25(f), the Council owes the Commission’s prior determination no deference and must make its own decision on the evidence before it.
- Louisiana Supreme Court precedent mandates that the Council’s role is that of an independent decisionmaker.
    - In *King v. Caddo Parish Comm’n*, 97-1873, p. 17 (La. 10/20/98), 719 So. 2d 410, 420, the Louisiana Supreme Court considered the level of deference the Caddo Parish Commission must give the lower Zoning Board of Appeals (ZBA) when deciding to approve a special use permit. *Id.* at 412. The Court held that the trial court erred when it concluded that the ZBA’s decision carried with it a “prima facie presumption of validity.” *Id.* at 419-20. The Commission, “as the final decision-making body,” was not merely charged with “reviewing” the decision of the ZBA under an arbitrary and capricious standard of review. *Id.* at 419. Instead, the Commission “makes an independent decision” after receiving the record from the ZBA. *Id.*
  - § 82-25(f) provides: “The following uses or activities shall not be issued a building permit until approved by the planning commission (or by the parish council on appeal).” This designates the Council as the approver on appeal. Then, § 82-25(h) provides: “The following factors for approval or denial of uses under subsection (f) of this section.”
  - If the Council is in the position of approver on appeal, it applies both subsections (f) and (h) to the full record before it. This is *de novo* review.

- The facts of this case dictate that the Council must review the Koch application *de novo*.
  - o The Council had significant new information, and specific to the (h) factors, that was not before the Commission.
  - o By simply affirming the Commission’s decision, the Council ignored all of the new information before it by not reviewing the Commission’s decision *de novo*. This constitutes arbitrary and capricious.
  - o The Parish’s interpretation of the jurisprudence is that no entity – neither the Council nor this Court – is responsible for reviewing the new information Petitioners put on appeal.
  - o “The test of whether a [parish body’s] action is arbitrary and capricious is whether the action is reasonable under the circumstances.” It is also “the disregard of evidence or the proper weight thereof.” *Lake Terrace Prop. Owners Ass’n v. New Orleans*, 90-C-0620 (La. 9/6/90), 567 So. 2d 69, 75.
  
- Even if, as the Parish asserts, the Council was acting in a legislative capacity, the result is the same, because the exercise of its legislative authority must be constrained by a standard.
  - o In *McCauley v. Albert E. Briede & Son*, 231 La. 36, 46-47 (1956), the Louisiana Supreme Court emphasized that: “an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases, and that an ordinance is invalid where it leaves its interpretation, Administration, or enforcement to the unbridled or ungoverned discretion, caprice or arbitrary action of the Municipal legislative body or administrative bodies or officials.”
    - *McCauley* stands for the proposition that a law that fails to provide sufficient standards to guide such legislative or administrative decision-making is void.
  - o In *Gaudet v. Economical Super Market, Inc.*, 112 So. 2d 720, 722 (La. 1959), the Louisiana Supreme Court has held that ordinance standards that rely generally on health, safety, and general welfare as the applicable standard for a permit decision are unconstitutional.
    - The Court outlined the standard to apply to the permit: “Whenever a petition has been filed requesting a permit for conditional use for a parking lot under the provisions of this Section and the City Council has been satisfied that such land use will not have an unduly detrimental effect upon the character of the neighborhood, traffic conditions, public utility facilities or other matters pertaining to the public health, public safety or general welfare, the City Council shall authorize the issuance of a temporary permit.” *Id.* at 722. The Supreme Court deemed the ordinance unconstitutional and the Council’s decision to approve the permit null and void. *Id.* at 724.
    - The Court reasoned that the standard failed to prescribe uniform rules or standards to guide the City Council in deciding when a permit is to be granted or denied. The decision “depended merely on whether or not the City Council had been satisfied that such a land use would not have an unduly detrimental effect on the character of the neighborhood . . . or other matters pertaining to the public health, public safety or general welfare.” *Id.* at 721.
  - o All of this case law is saying that the Louisiana Supreme Court refuses to uphold ordinances that affirmatively provide a standard for the Council to apply on the basis that they are too general.

- However, Petitioners do not argue that the St. James Parish Ordinance is unconstitutional or silent because (f) and (h) provide specific considerations that must be applied.
- This Court is also undertaking *de novo* review as to these questions of statutory interpretation.
  - The Court's review is *de novo* because these are all questions about the interpretation of law, including the Ordinance.
    - The disagreement regarding the proper statutory interpretation of the Ordinance and the consequential failure of the Parish to follow its own procedures raises questions of law that are subject to *de novo* review by this Court. *See Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 3/9/22), 337 So. 3d 534, 540, *writ denied*, 22-00587 (La. 6/1/22); 338 So. 3d 491.
  - The Court does not owe deference to the Council's interpretation of its Ordinance because the statute's plain text provides a standard – Council is required to apply the factors under § 82-25(h).
  - The Parish's failure to follow its Ordinance is evidenced by a record that is devoid of any (h) factor analysis.
    - Louisiana courts have determined that a decision-making body must support its decisions with reasonable justifications articulated in the record to survive judicial review of the arbitrary and capricious standard. *Clark v. City of Shreveport*, (La. App. 2 Cir. 5/10/95), 655 So. 2d 617, 622 (finding that the zoning board's decision was not based on reasoned considerations of public health, safety, and welfare because “[s]uch an articulation does not appear in the record”).
  - The Court is reviewing whether the Parish was following proper procedure, *i.e.*, whether it considered all of the new evidence before it in light of the correct legal standard—*de novo* review. In other words, this is not a question of *how* the Parish weighed the evidence but *if it* weighed it at all, and *if it* weighed it in the manner required by the Ordinance.
  - At the hearing, the Court asked if the oral comments considered by the Council were enough to support the Council's decision under the arbitrary and capricious standard.
    - No evidence exists in the record to support the claim that the Council independently reviewed the initial application.
  - The mandatory considerations here are the mandatory findings of subsection (e) that were not made, or in the alternative, the mandatory considerations of subsection (h)(3), including an environmental cost benefit analysis, which were also not made.
  - This Court is not in the position of having to guess at what “could have been” the Council's considerations.
  - The record shows that the Councilmembers failed to consider the environmental impacts of the facility or weigh the benefits against the costs, failed to consider Plaintiff's evidence, only heard one side of the story (Koch's), and where they detailed their findings, got most of it wrong (reaching a conclusion contrary to substantiated competent evidence).
    - The Council only considered the benefits side of the cost-benefit analysis.

- The Council must make the determination as to whether unique circumstances exist under § 82-25(c) and (e).
  - o The plain language of the Ordinance designates the Council as the decision-maker in any situation where construction is proposed in wetlands, where no uses are specifically listed as allowable by the Ordinance, and whether a proposed use is a “unique situation” does not alter this.
  - o The Parish’s reading of the Ordinance, which casts the “unique situation” determination as one made by the Commission and transforms it to a specifically allowable use, would afford wetlands less rigorous review than other land use categories in subsection (c).
    - This is inconsistent with the Ordinance and the Parish’s efforts regarding wetlands protection and flood control.
    - If the Court accepts Defendant’s argument that the Commission, not the Council, should make the decision about whether a unique situation exists for construction in wetlands and warrants approval, this would violate the Ordinance by stripping the Council of its decision-making authority, and by casting a project as a subsection (f) or Tier 2 project, would prevent additional consideration by restricting the Council’s involvement to the appeals stage.
- The Ordinance places the decision in the hands of the Council.
  - o When the Commission receives a land use application, it must determine (1) whether it has the authority to approve the application under Tier 2 review, or (2) whether it only has the authority to make a recommendation to the Council to approve or deny the application under Tier 3.
    - Whether Tier 2 or Tier 3 review applies turns on whether the land use that is proposed is “specifically listed as allowable” in the proposed land use category under subsection (c).
    - If it is not, then Tier 3 applies, or, in other words, the Parish must follow subsection (e).
  - o While the Commission plays an important role in deciding whether to recommend a particular use in wetlands to the Council, the Ordinance says that the Commission does not ever have the ultimate approval authority—only the Council does.
    - That is to say, every project in wetlands must be a Tier 3 project and can never be considered under Tier 2.
  - o Because under Tier 3 review, only the Council has the authority to approve a proposed pipeline (or any proposed use) in wetlands, it must make the determination of whether such use is a “unique situation requiring location in the water.” While the Commission may include its own assessment as part of its recommendation to the Council, the Council must confirm that finding.
    - Even if the Court were to find that the Commission makes the unique situation finding, the Council’s failure to address this aspect of Petitioners’ appeal renders its decision arbitrary and reversible.
  - o The Commission or the Council may find that a pipeline is a “unique situation requiring location in the water” — but that does not transform the language of subsection (c), which is clear that there is no use that is “specifically listed as allowable” in wetlands, because wetlands are “shown for information only” and they “should remain unoccupied.”

- While a use that is “a unique situation requiring a location in the water” may be approved in wetlands by the Council when it follows the correct procedure – Tier 3 review – it does not transform a pipeline into a use that is “specifically listed as allowable.”
- The Council’s authority and oversight over the Parish’s budget and wetlands protection and flood control necessitates that the Council be the decisionmaker as to any development in the wetlands.
  - Given the extensive regulations in its own law, as well as state and federal law, the Parish Council naturally and logically included a warning that wetlands “should remain unoccupied.”
  - The Council oversees the Parish President and the Coastal Zone Management Advisory Committee in their issuance of permits for construction in coastal zone areas, including wetlands.
    - The Council can determine “in its sole discretion” whether to hold a public hearing to assist it in making a decision as to whether to grant or deny a permit for construction in wetlands or other coastal areas.
  - St. James Parish has received, and spent, millions of dollars for wetlands conservation, coastal protection, and flood control, through its participation in the Coastal Protection Trust Fund, and, more recently, the West Shore Lake Pontchartrain Hurricane Protection System (WSLP).
    - Thus, the implications of individual construction projects in wetlands are not only a concern for the Parish of St. James, but for its efforts in tandem with other Parishes and federal and state agencies to address other aspects of flood control and coastal protection.
    - This attention to wetlands conservation, mitigation and flood control is the subject of intersecting federal, state, and parish laws, which have budget allocations and expenditures. A decision about whether to allow construction in wetlands, if there is a unique situation, has long-lasting impacts, within and beyond St. James Parish. It makes no sense, in light of the Council’s scope of authority, and its responsibility for oversight of governmental programs and policies specific to wetlands protection, that it would have less oversight responsibility for decisions as to construction and development in wetlands than it would for decisions concerning construction and development in other land use categories.

#### **ST. JAMES PARISH’S POST-HEARING BRIEF**

- If the Ordinance were the only consideration here, the answer to the Court’s first question would be that the Commission’s decision is to be evaluated against the arbitrary and capricious standard.
  - The case of *King v. Caddo Par. Comm’n*, 97-1873 (La. 10/20/98) 719 So. 2d 410 must be considered.
    - In *King*, the Louisiana Supreme Court evaluated a multi-level land use decision process similar to this one.
    - In *King*, Zoning Board of Appeals (“ZBA,” analogous to the St. James Parish Commission) was the initial decision maker, subject to appeal to the Caddo Parish Commission (analogous to the St. James Parish Council). The Louisiana Supreme Court had “to decide what deference the Commission must give to a decision made by the ZBA.” “In other words, does the Commission ‘review’ the ZBA’s decision to determine whether it was arbitrary and capricious, or is the Commission free to accept or reject the

recommendation made by the ZBA.” *King*, 97-1873 at p. 17; 719 So. 2d at 419.

- The Court concluded that the Commission was not bound to accept the ZBA’s decision merely because it satisfied the arbitrary and capricious standard and was prima facie valid. Rather, the commission “instead makes an independent decision.” *Id.*
- Therefore, under *King*, the Council’s decision here is the “decision” subject to review. However, because the Council denied the appeal and left the Commission’s approval standing, the Council’s “decision” is identical to the Commission’s approval.
- Thus, the substantive content of the Commission’s approval, approved by the Council, is the decision at issue, and is subject to review by this Court under the arbitrary and capricious standard.
  - This Court is called upon to examine “whether the result of the legislation is arbitrary or capricious.” *Palermo Land Co., Inc. v. Planning Commission of Calcasieu Parish*, 561 So. 2d 482, 492 (La. 1990).
- While the Ordinance does not express a standard of review, the Louisiana Constitution, the St. James Parish Home Rule Charter, and jurisprudence do.
  - La. Const. Art. 6, § 17 grants the Parish the power to adopt regulations for land use, to create commissions and districts to implement those regulations, and to review decisions of any such commission.
  - The *King* case answers how the Council should review the Commission’s approval:
    - We conclude that the Commission, as the final decision-making body, has not abandoned any of its legislative prerogative and decision-making authority. The Commission receives the record from the ZBA, but is free, in addition, to hold hearings, and receive additional evidence and testimony. The Commission does not review the ZBA’s decision to determine whether it was arbitrary and capricious, but instead makes an independent decision. *King*, 97-1873 at p. 1; 719 So. 2d at 420.
  - Absent other legal limitations on the Council’s review, the standard of review is governed by the scope of the Council’s power as a legislative body, and any provisions in the Land Use Ordinance that otherwise restrict that power.
    - The St. James Parish Home Rule Charter, Art. III(A)(7) vests the Council with “all legislative power in the Parish of St. James.” The Land Use Ordinance does not diminish that broad legislative power when the Council is considering a land use appeal.
    - Under *King*, the Council retains its legislative flexibility. That flexibility, coupled with the absence of a specific mandate as to how the Council must review the Commission’s decision, underscores the validity of the Council’s denial of Plaintiffs’ appeal.
  - There is no requirement to make “on the record” findings.
  - But the record is not silent regarding the conclusions reached in the land use approval process. The Commission considered the (h) factors and summarized its reasoning in its approval resolution:
    - “The commission finds that approval is appropriate under ordinance § 82-25, with specific reference to the factors described in § 82-25(h) because: the impacts of the proposed use are common to industrial plants and would



not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish's ability to attract other beneficial development by virtue of the project's location in an industrial area and its distance from potentially impacted uses."

- By denying the appeal, the Council affirmed this reasoning. The facts in the record substantiate the Commission's consideration. This supports the reasonableness of the Commission's decision.
- Members of the Commission and the Council had to bring their own experiences and knowledge to the table when making zoning decisions:
  - "We find that the hearings required are designed solely to afford interested parties an opportunity to be heard before the governing authority makes a decision under its police power which by its nature will affect private property rights and values. No provision of our law requires the proceedings of such hearings be recorded nor have appellants cited any statutory regulation prohibiting the governing authority from considering evidence, testimony or information obtained outside such hearings by personal investigation. Neither are we aware of any prohibition against the members of the governing authority resorting to their individual knowledge and experience in making decisions in such matters. How, when and where the local authorities gain knowledge of the subject matter is of no concern to the courts. What is said at the required public hearings is not necessarily the criteria of reasonableness when an ordinance of such nature is attacked as being arbitrary or discriminatory. The test to be applied is whether it is in fact arbitrary, unreasonable and discriminatory in the light of all attending circumstances." *Meyers v. City of Baton Rouge*, 185 So. 2d 278, 282-83 (La. Ct. App. 1966).
- Whether a "unique situation" exists that would justify allowing a use to locate in the wetlands is a decision that must be made at each stage of the process by different officials responsible for decision-making at each stage.
  - § 82-25(b): Plan compliance. All departments, officers, employees, boards, and commissions of the parish, and all representatives of the parish serving on boards, commissions, or other governing bodies whose jurisdictions include any portion of the parish, shall carry out their public duties in compliance with the land use plan. To the maximum extent permissible by law, all such agencies, persons, and entities shall exercise decision making discretion in a manner consistent with the land use plan.
  - The above referenced section mandates that each person participating in the land use decision-making process to exercise discretion in accordance with the land use plan.
    - 3 tier process.
  - A preliminary determination was made at the administrative level that Koch Methanol's ethane pipeline was a "unique situation requiring a location in the wetlands."
    - This preliminary determination was advertised in the two-week public notice about the project and was stated in the Commission's 07/31/23 meeting agenda.

- The Commission adopted that preliminary determination as its own. No one raised an objection to that determination until a month later when Plaintiffs appealed to the Council.
- If the administrative intake process elevates a project in the wetlands to a Tier 2 decision (as here because it requires water permit) the Commission then has the responsibility under § 82-25(b) to exercise its discretion consistent with the land use plan, which inherently involves the Commission considering and deciding on the meaning of “unique situation” when a project is located in the wetlands.
  - “The commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein. Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located an area designated as Wetlands in the land use plan, such pipeline connection being a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located in the Wetlands area, in accordance with ordinance § 82 25(c)(11). The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.”
- The Council is charged with the responsibility to exercise their decision-making discretion pursuant to § 82-25(b). Therefore, when a “unique situation” in the wetlands reaches the Council’s level (either on appeal as here or as a Tier 3 decision), the council members determine whether a ”unique situation” is justified.
  - Here, the Council validated the wetlands determination of the Commission by denying the appeal.
- Plaintiffs believe that *any* use in wetlands requires Tier 3 decision under subsection (e). They contend that only the Council can determine whether there is a “unique situation” begetting an allowable use in wetlands.
  - They would have to consider every pier, culvert, boat ramp, drainage ditch, weir, and pipeline crossing – this would undercut the mandate in § 82-25(b) that assigns compliance with the land use plan to a variety of departments, officers, employees, board, and commissions.
  - The Court would have to overlook the administrative interpretation authority in § 18-37(a) and disregard the entire structure of the Ordinance, and would require it to disregard the “allowable uses” section.
- The plain text of the Ordinance demonstrates that the pipeline connection in the wetlands is an “allowable use.”
  - “When a statute is clear and unambiguous and the application of the statute does not lead to absurd consequences, the statute must be applied as written.” *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 3/9/22); 337 So. 3d 534, 540, *writ denied*, 22-00587 (La. 6/1/22) 338 So. 3d 491.
- “Uses not specifically listed as allowable in a use category in subsection (c) of this section are prohibited unless the planning commission considers the use in accordance with subsections (g), (h) and (i), and the parish council approves the use.” § 82-25(e).
  - The question of whether the entirety of the Koch Methanol Project is an allowable use turns on whether the 1,000 feet of 8-inch ethane pipeline is “allowable in a use category in subsection (c).”

- The “Wetlands” section provides: “Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18.”
  - This provision urges that wetlands *should* be left undisturbed. The word “should” indicates that this is aspirational, not mandatory.
  - The above language is provided under the section titled “allowable uses.”
  - The exception – “unique situation requiring location in the water” – is specifically listed as allowable and is subject to Tier 1 approval under “permitted as a matter of course” in § 82-25(d), or the enhanced Tier 2 review.
- The main ethane supply pipeline is located in the wetlands – the only way to connect to a pipeline located in the wetlands is to go through wetlands; there is no other practical way. This provides a rational basis for the Commission’s determination that the 1,000 feet of connecting ethane pipeline is a “unique situation requiring a location in the water.”
- § 82-25(c)(11) allows limited uses in the wetlands, “subject to any permits required under article V, chapter 18,” which is a reference to the Coastal Zone Resource Management Program.
- While the text of the Ordinance does not clearly designate who decides when a “unique situation” in the wetlands exists, such lack of precision does not amount to no guidance. “In instances involving the construction of laws the meaning of the statute involved is to be determined by its reason and spirit, and in ascertaining its intent courts are not bound by the niceties of grammatical rules.” *Gautreau v. Bd. of Elec. Examiners of City of Baton Rouge*, 167 So.2d 425, 430 (La. Ct. App. 1964)(citing *Edwards v. Daigle*, 201 La. 622, 10 So.2d 209)).
- The doctrine of contemporaneous construction is a longstanding rule of interpretation that accords “great weight” to “the construction of an ordinance as interpreted by a municipal commission council.” *Gautreau*, 167 So. 2d at 433.
- The doctrine allows local officials to routinely interpret and apply the law to the decisions within their purview, and courts are to give great weight to those interpretations.

#### **KOCH METHANOL’S POST-HEARING BRIEF**

- Jurisprudence indicates that judicial review is of the Council’s decision, although some court decisions look at both decisions from the Council and the Commission. No court has addressed the review of appealed land use decisions in St. James Parish under the Ordinance.
- The action of a governmental body is arbitrary and capricious and unreasonable if it bears no relation to the health, safety, or general welfare of the public. *King*, 719 So. 2d at 418. Plaintiffs have the burden of proving by a preponderance of the evidence that the governmental body’s decision has no substantial relationship to public health, safety, morals, or the general welfare. *Toups v. City of Shreveport*, 2010-1559, p. 4 (La. 3/15/11); 60 So. 3d 1215, 1218 (citing *Palermo Land Co., Inc.*, 561 So. 2d at 493).
- The Commission’s decision was not arbitrary and capricious because the Commission:
  - Considered Koch’s application, Koch’s live presentation at the commission meeting, and comments made at the meeting;
  - Determined that the piece of the project involving an ethane pipeline connection located in wetlands was a unique situation requiring a location in water under

- subsection (c) because the existing ethane pipeline to which it would connect was already located in Wetlands; and
- Applied the subsection (h) factors to the project (as shown is the Resolution approving it).
- Plaintiffs cannot show that the Commission’s decision had no rational basis in public health, safety, morals, or the general welfare.
- Plaintiffs cannot carry their burden of proof that the Council’s decision was arbitrary and capricious.
    - The record before the Council is full of evidence with respect to public health, safety, comfort, or the general welfare that would support the Council’s decision, and under *Palermo*, the Council need not have explained its considerations.
- Home Rule Charter, art. III.A.7 gives the Council all legislative power in the parish and includes the constitutional authority to enact land use regulations, create the Commission, and review the Commission’s decisions:
- “Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures.” La. Const. Art. 6, § 17.
- The Constitution does not prescribe the standard for review of commission decisions – the Supreme Court considered the *res nova* issue of deference due by a local government subdivision to a zoning commission, stating:
- “This case is *res nova* in the sense that we are called upon to decide what deference the [Council] must give to a decision made by the [Planning Commission]. In other words, does the [Council] ‘review’ the [Planning Commission]’s decision to determine whether it was arbitrary and capricious, or is the Commission free to accept or reject the recommendation made by the [Planning Commission]. We conclude that the [Council], as the final decision-making body, has not abandoned any of its legislative prerogative and decision-making authority. The [Council] receives the record from the [Planning Commission], but is free, in addition, to hold hearings, and receive additional evidence and testimony. The [Council] does not review the [Planning Commission]’s decision to determine whether it was arbitrary and capricious, but instead makes an independent decision.” *King*, 719 So. 2d at 419.
  - “The Council is not to merely apply an arbitrary and capricious standard, but neither does the Court announce that the Council must conduct the equivalent of a judicial *de novo* proceeding. Instead, the Supreme Court looks at issue of zoning decisions – zoning is a legislative function flowing from the police power of local government bodies with which the courts will not interfere unless the action is palpably erroneous.” *Id.* at 418.
  - In *King*, the Louisiana Supreme Court held both that: (1) a parish council has not abandoned any of its legislative prerogative when it sits in review of a decision by the planning commission it constitutionally created; and (2) courts will not interfere with [a council’s legislative] prerogative unless their action is palpably erroneous and without any substantial relation to the public health, safety or general welfare. *Id.* at 418-19.
- Plaintiffs argue that a *de novo* standard is to be applied. However, a court’s imposition of the requirements of a judicial *de novo* proceeding on a local legislative body sitting in

review of its administrative department confuses separation of powers and would veer dangerously close to a court stepping beyond its role as providing a “mere check” on the Council’s legislative power.

- Subsection (f) provides that the Council “consider the appeal” but is silent on, and therefore defers to the Council on, how the Council should consider that appeal (including whether the Council decides the appeal on the record or even convenes a hearing). The Ordinance does not provide the Council a standard of review.
  - o The Ordinance also does not mandate that Council consider the (h) factors.
    - Subsection (h) provides: “Procedure before the planning commission” provides: “The planning commission shall consider the following factors for approval or denial of uses under subsection (f) of this section. . .”
    - Nowhere in subsection (f) or (h) does the Ordinance require the Council to consider the factors *de novo* in reviewing the Commission’s decision. Because it is silent, the Ordinance reserved to the Council its full legislative zoning powers in reviewing the Commission’s decisions as it sees fit.
- The Planning Commission is charged with implementing the Ordinance via the Constitution, the St. James Parish Home Rule Charter, and the Ordinance itself.
  - o St. James Parish created the Commission as an administrative department charged with implementing its land use regulations, pursuant to La. Const. Art. 6, § 17:
    - Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures.
- The Parish chose that the Commission and its administrative staff exercise the first-instance decision making upon receipt of a land use application.
  - o The Commission and its administrative staff receives the land use application, screens the use, and makes the initial determination as to into which category the applied-for use belongs. § 82-25(g)(1).
- To determine whether a land use application is in (d), (e), or (f), it must first be determined whether the use is an “allowable use” under subsection (c). Because “unique situations requiring a location in the water” is listed under “allowable uses” in the Wetlands category of subsection (c), the Commission must make this determination.
  - o La. R.S. § 33:110’s conferring of all “powers as may be necessary to enable it to fulfill its functions, promote planning, and in all respects carry out the purposes of this Sub-part” upon the Commission authorizes the Commission to make “the unique situation” determination.
  - o § 82-25(c) provides the Commission and administrative staff discretion in evaluating allowable uses: “These category descriptions are not intended to be a comprehensive prescriptive list of all possible uses, but shall be interpreted to control the general character and impacts of development.”
- In contrast, nowhere in the subsections governing the *initial* consideration of land use applications does the Ordinance define a role for the Council.
  - o For § 82-25(d), (e), and (f), the Council only steps in at all under subsection (e) – and the Council’s role comes after the Commission has first considered the use.

- Further regulatory authority for the role of the Commission as decision-maker in the first instance is found in § 82-25(g)(2), which allows the Commission to require the particulars for an application submitted under subsection (e) or (f), and in § 82-25(i), which allows the Commission to establish conditions on uses prior to approving a use under (e) or (f).
  - Here, the Parish followed this procedure.
  - The Commission’s determination that its authority for approval of the project as a whole was governed by § 82-25(f) was also reasonable pursuant to the language of subsection (f)(3), which applies to an “industrial development” requiring state or federal permits. Thus, the development as a whole undergoes section (f) approval, not only the piece of the project located in the industrial land use category.
  - Because the Koch project is an allowable use in the industrial land use category that requires permitting and is an allowable use in the Wetlands category (as a unique situation), the Commission’s review and approval of the project pursuant to subsection (f) was correct, and there was no basis to undergo (e) review, which is reserved for uses not listed as allowable uses.
  - The Parish’s interpretation of its own authority is entitled to great weight – particularly where, as here, there is evidence as to how the Parish has applied its own regulation in practice. *Carrere v. Orleans Club*, 37 So. 2d 715, 720 (La. 1948) (action was “in accord with the interpretation placed on this subsection by the municipal authorities themselves and which, under our jurisprudence, is given great weight.”).

**PLAINTIFFS’ BRIEF IN REPLY TO KOCH METHANOL’S POST-HEARING BRIEF**

- In response to the Court’s first question, Koch presented the inaccurate position that Plaintiffs “have not challenged the Commission’s decision at all.”
- - The record shows that Plaintiffs have indeed challenged the Commission’s decision.
- Plaintiffs raised the Commission’s illegal procedure in their appeal to the Council. Plaintiffs also raised the Commission’s arbitrary characterization of the application as a unique situation.
- Plaintiffs further challenged the Commission’s legal error in approving the Project rather than sending it to the Council for approval and its failure to make findings required by subsection (e).

**COURT’S ANALYSIS:**

Before analyzing the specific and somewhat technical arguments of the parties presented in the above captioned matter, this Court must first define the legal standard it must apply under these circumstances. As stated in *St. Claude Avenue v. City of New Orleans*, 22-0813 (La. App. 4<sup>th</sup> Cir. 6/22/23), 368 So. 3d 1160, a challenge to a zoning decision in Louisiana is a *de novo* proceeding on the issue of whether the result of the legislation is arbitrary and capricious. Zoning is a legislative function. The authority to enact zoning regulations flows from the police power of the various governmental bodies. Because legislative action is a manifestation of the will of the people, every presumption of law and fact must be indulged in favor of its constitutionality.

(Additional citations omitted) For the purposes of its analysis, this Court analogizes the St. James Parish Land Use Ordinance as a form of zoning and applies said ordinance under the laws governing review of zoning decisions.

**Judicial review of zoning decisions acts merely as a check on the legislative power ... to ensure that there is no abuse of the power. Courts will not and cannot substitute their judgment for that of the legislative authority.** *Id.* citing *Palermo Land Co.*, 561 So. 2d 482. Louisiana jurisprudence provides that a presumption of validity attached to all zoning decisions. The burden rests on the challenger to overcome this presumption... The opponent must show a real or substantial relationship to the general welfare is lacking. Though this presumption is rebuttable, the burden of proof rests on the challenger to overcome this presumption. *Id.* (Additional citations omitted.) The interpretation of a legislative authority with respect to a legislative zoning ordinance is entitled to great weight. *New Cingular Wireless, PCS, LLC v. City-Parish of East Baton Rouge*, 21-0292 (La. App. 1<sup>st</sup> Cir. 12/30/21), 340 So. 3d 1037. **The Louisiana Supreme Court has stated that, “in order to justify a holding that the legislative action is arbitrary, capricious and unreasonable,” the challenger must show both “that there was no room for a reasonable difference of opinion, and that there was no substantial evidence upon which the legislative action could have been justified.** *Id.* citing *Four States Realty Co. v. City of Baton Rouge*, 309 So. 2d 659.

The Louisiana Supreme Court in *King v. Caddo Parish Commission*, 97-1873 (La. 10/20/98), 719 So. 2d 410, defines the terms “arbitrary and capricious action” to mean willful and unreasonable action, absent consideration and in disregard of the facts and circumstances of the case. **On the other hand, when 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.** *Id.* Courts have further defined these terms over and over within case law. “Capricious” or “Capriciously” has been defined as a conclusion reached with no substantial evidence to support it or a conclusion contrary to substantial competent evidence. “Arbitrary” or “Arbitrarily” infers a disregard or failure to give proper weight to the evidence. *St. Claude Ave.*, 368 So. 3d at 1172.

This Court also cites the parameters of analysis set forth by the Louisiana First Circuit Court of Appeal when interpreting the same ordinance at issue in the above captioned matter (the

St. James Parish Land Use Ordinance) within the case of *Yolande Schexnayder & Son, Inc. v. Parish of St. James*, 21-416 (La. App. 5<sup>th</sup> Cir. 3/9/22), 337 So. 3d 534.

Land use is subject to the police power of various governing bodies, and the courts will not interfere with the decisions of these bodies unless it is clear that their action is without any relation to the public health, safety or general welfare. The proper interpretation of the language of a statute or Parish ordinance is a question of law requiring *de novo* review. The statutory and jurisprudential rules for statutory construction and interpretation apply equally well the ordinances, rules, and regulations. When a statute is clear and unambiguous and the application of the statute does not lead to absurd consequences, the statute must be applied as written. However, where a literal interpretation would produce absurd consequences, the statute must be construed as to produce a reasonable result. Moreover, where it is possible, courts have a duty in the interpretation of a law to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter. All laws pertaining to the same subject matter must be interpreted *in para materia*. When interpreting the law, the starting point is the language of the written law itself. (Additional citations omitted).

This Court now turns to analyzing the issues presented in this matter through the guidance set forth in the above cited case law. This Court notes that said case law does not require this Court to make findings on every allegation or assertion included within Plaintiffs Petition. What the law requires is a review of the overall decisions and decision-making processes followed by the Parish entities to determine whether said actions were arbitrary, capricious and unreasonable.

In determining which Subsection of the St. James Parish Land Use Ordinance the Koch Methanol requested permit should be evaluated under (Subsection (e) or (f)), this Court acknowledges that the “Wetlands” referenced portion of the ordinance as included in § 82-25(c) does include language that, at the very least, creates an ambiguity, as the procedure for considering uses in wetlands is not clearly and succinctly defined. As such, this Court turns to the analysis set forth in *Yolande Schexnayder & Son, Inc.* wherein this Court must interpret the Ordinance to produce a reasonable result and not allow a literal interpretation which would produce an absurd result. If accepting Plaintiffs’ position that each and every improvement made within land classified as “Wetlands,” no matter how small or minute, would require consideration by the Planning Commission and additional approval by the Council, this Court believes the potential for an absurd result(s) would then exist. This Court, using principles of rationality, does not believe that such would have been the intent of the Council when enacting this ordinance because such a requirement would be overly exhaustive and more times than not, unnecessary. Furthermore, this Court points out that a specific finding was made on the record by the Planning Commission on the issue of “unique situations requiring a location in the water” (As included in the “Wetland”




section of Subsection (c) of the Ordinance) and therefore any argument that this provision was not considered in the decision-making process fails. Furthermore, the Court in *New Cingular Wireless, PCS, LLC*, states that analyzing Courts should give great weight to the interpretation of legislative bodies to as to its interpretation of its legislative zoning ordinances.

Upon finding that the Commission and the Council applied the proper standard of consideration to Koch Methanol's requested permit under § 82-25, this Court must now determine if the decision made by either the Commission and/or the Council meets the defined arbitrary and capricious standard under the law. In review of the vast record submitted in the above captioned matter, this Court notes that this particular requested permit was the subject of two separate public hearings before two governmental bodies of St. James Parish. This Court notes that both representatives of the public and Koch Methanol were allowed to attend and speak at both meetings. The record of this matter indicates that substantial public comment, presentation and discussion was held/presented regarding matters related to the requested permit at the appeal hearing held by the Council. As stated over and over throughout the case law on these types of matters, the role of this Court in reviewing the decision of a legislative body is not to substitute its own interpretation of the facts or its own judgment for that of the legislative authority, but to determine whether there was any room for reasonable differences of opinion, and whether there existed no substantial evidence upon which the legislative action could have been justified. This Court finds that the procedures followed by the St. James Parish Planning Commission and the St. James Parish Council in reaching its decision of the permit at issue seem to have been done honestly and upon due consideration and that the issues presented regarding the approval or denial of the Koch Methanol requested permit left room for reasonable differences of opinion to those considering the application. As such, this Court must ultimately conclude that the decisions of both the St. James Parish Planning Commission and the St. James Parish Council do not meet the arbitrary, capricious and unreasonable standard as defined under the law.

For these reasons, the requests for relief by Plaintiffs, to reverse the September 27, 2023, decision of the Council granting Koch Methanol's land use application for its proposed project, to remand the matter to the Council for additional consideration under Art. II, § 82-25 of the Land Use Ordinance, to stay the effectiveness of the Koch Methanol St. James land use approval pending

final resolution of this appeal, and to issue injunctive relief vacating the Parish's approval of Koch Methanol's land use application, are denied.

**SAID REASONS FOR JUDGMENT ISSUED** in Convent, Louisiana on this 18<sup>th</sup> day of June, 2024.

  
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**CODY M. MARTIN**  
**DIVISION "B"**  
**JUDGE – 23<sup>RD</sup> JUDICIAL DISTRICT**

**PLEASE NOTIFY:**  
ALL PARTIES