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COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 24-CA-493

THE DESCENDANTS PROJECT, ET AL.

Plaintiffs - Appellee

VERSUS

ST. JOHN THE BAPTIST PARISH, ET AL.

Defendants - Appellants

On Appeal of Judgments of the
40th Judicial District Court for the Parish of St. John the Baptist,
State of Louisiana, Docket No. 77305, Division "C"
Honorable J. Sterling Snowdy, Presiding

A CIVIL PROCEEDING

INTERVENOR-APPELLANT, GREENFIELD LOUISIANA, LLC'S ORIGINAL BRIEF

Respectfully submitted,

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I. STATEMENT OF JURISDICTION

This is an appeal from a final, appealable judgment entered by the 40th Judicial District Court ("Trial Court") on January 9, 2024.

On August 4, 2023, the Trial Court entered a Judgment which denied a motion for summary judgment filed by St. John the Baptist Parish and Greenfield Louisiana, LLC, and granted the motion for summary judgment filed by Plaintiffs, The Descendants Project, Jocyntia Banner, and Joyceia Banner. The trial court's granting of the Plaintiffs' motion for summary judgment was a final judgment, as it granted Plaintiffs the entirety of the relief they requested.

Greenfield and St. John the Baptist Parish timely filed a Motion for New Trial, which the Trial Court denied on January 9, 2024. Notice of the denial of the Motion for New Trial was mailed by the Clerk of Court on January 10, 2024.

Greenfield Louisiana, LLC ("Greenfield") and St. John the Baptist Parish timely filed Motions for Devolutive Appeal in the Trial Court on March 5, 2024, setting forth their intention to appeal the denial of both judgments referenced above. The Order granting the appeal was signed by the Trial Court on March 6, 2024.[1] This Court has jurisdiction under Article 5, Section 10 of the Louisiana Constitution and articles 2083 and 2121 of the Louisiana Code of Civil Procedure.

II. STATEMENT OF THE CASE

This case arises from the appeal of the Trial Court's summary judgment ruling which invalidated a thirty-year-old zoning ordinance of St. John the Baptist Parish. Greenfield, Intervenor in this action, is the former owner and current lessee of approximately 1,362 acres of land located in St. John the Baptist Parish (the "Greenfield Property"). On or about November 9, 2021, The Descendants Project,

[1] The substantial delay between the signing of the Order and the lodging of the record in this Court stemmed from several changes in personnel in the Clerk of Court's office, ultimately resulting in the necessity of the Trial Court entering an Order designating the record on appeal, and this Court entering an Order on October 2, 2024, directing the Clerk of the Trial Court to lodge the record with this Court on or before November 4, 2024.

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Jocyntia Banner, and Joyceia Banner ("Plaintiffs") filed a Petition for Writ of Mandamus against St. John the Baptist Parish under Suit No. 77305 in the Fortieth Judicial District Court in and for the Parish of St. John the Baptist. In that suit, Plaintiffs sought a writ of mandamus directing the Parish to remove what Plaintiffs contended was the unlawful industrial zoning of the Greenfield Property stemming from alleged flaws in the passage of a 1990 Ordinance. Greenfield intervened in that suit and, along with the Parish, opposed the use of the mandamus procedure. Plaintiffs eventually filed amended and second amended petitions and challenged the validity of the thirty-year-old Ordinance 90-27 on a number of grounds.

In Paragraphs 204 to 211 of their Second Amended Petition (hereinafter the "Petition"), Plaintiffs articulated their arguments regarding the invalidity of Ordinance 90-27:

- The illegality and corruption of the Parish President surrounding the adoption of Ordinance 90-27 nullifies the ordinance.[2]
- The ordinance was never authenticated as required by Article VI, Section F(1) of the Parish's Home Rule Charter.[3]
- The original survey map demonstrating the rezoning designations in Ordinance 90-27 was "mysteriously" torn from the official records in the Clerk of Court.[4]
- The Parish's ***current*** zoning maps conflict with each other as to the exact status of zoning of the Wallace tract and none of them comply with the Parish Code's requirements for official maps.[5]
- The ordinance did not comply with the Parish's land development regulations.[6]

The parties filed cross motions for summary judgment. The Trial Court rejected each of Plaintiffs' arguments, save one, and on August 4, 2023, issued summary judgment and accompanying Written Reasons for Judgment[7] in favor of Plaintiffs, finding Ordinance 90-27 was void *ab initio*. The Trial Court found that because the 1990 Parish Council had approved an amendment to Ordinance 90-27

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2 R. 459, Par. 204-207.
3 R. 460, Par. 208.
4 R. 460, Par. 209.
5 R. 460, Par. 211.
6 R. 430, Par. 31-34.
7 R. 710, 712; see also App'x Ex. 1 and 2.

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that imposed a buffer within the I-3 zoning at the Parish Council's public hearing without first sending the amendment back to the Planning Commission, the Ordinance was void *ab initio* – even though the Parish's Home Rule Charter specifically authorizes the Parish Council to pass an ordinance at the public hearing ***with or without amendments*** and without any requirement that the amendment (as opposed to the original ordinance) first be considered by the Planning Commission. In finding that the amended Ordinance 90-27 should have first been sent back to the Planning Commission, the Trial Court relied on a provision within the Parish Code of Ordinances, Section 113-76, that required Planning Commission consideration and approval of amendments to the official zoning map.

Greenfield filed a Motion for New Trial on August 15, 2023, challenging this erroneous legal conclusion and pointing out to the Trial Court that to the extent the Code of Ordinances provision which required Planning Commission approval of amendments to the official zoning map conflicted with the provisions of the Home Rule Charter, the latter must prevail. On January 9, 2024, the Trial Court issued its Judgment on Motion for New Trial, denying the new trial on the grounds that the language of the Parish Home Rule Charter and the Code of Ordinances do not conflict. Rather, the Trial Court found, the Code of Ordinances merely "supplements" the Home Rule Charter, "providing additional requirements for a valid ordinance."[8]

The Trial Court based its holding, in part, on the maxim that "[w]here there are two permissible views of the evidence, the fact-finder's choice cannot be manifestly erroneous or clearly wrong."[9] But the Trial Court's determination was not a factual one and instead stemmed from the misapplication of basic rules of statutory interpretation, the most important being that the provisions of a parish's

[8] R. 1555; see also App'x Ex. 3.
[9] R. 1556 (citing *Serpas v. Tulane Univ. Hosp. & Clinic*, 2013-1590 (La. App. 4 Cir. 4/14/14), 161 So.3d 726).

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home rule charter, which is tantamount to the constitution of the parish, supersede any contrary provision in its code of ordinances. Greenfield filed its Notice of Appeal and asks this Court to remedy the Trial Court's erroneous legal decisions denying both Greenfield's Motion for Summary Judgment and its Motion for New Trial.

III. ASSIGNMENTS OF ERROR

A. The Trial Court erred in denying summary judgment in favor of Greenfield.

B. The Trial Court erred in granting summary judgment in favor of Plaintiffs.

C. The Trial Court erred in denying Greenfield's Motion for New Trial.

IV. ISSUES PRESENTED FOR REVIEW

A. Did the Trial Court err in finding that § 113-76 of the St. John the Baptist Parish Code of Ordinances applied to the amendment of Ordinance 90-27?

B. Did the Trial Court err in holding that § 113-76 of the St. John the Baptist Parish Code of Ordinances did not conflict with the St. John the Baptist Home Rule Charter?

C. Did the Trial Court err in treating the provisions of the St. John the Baptist Parish Home Rule Charter and its Code or Ordinances as laws of equal dignity?

D. Did the Trial Court err in finding that the amendment to Ordinance 90-27 changed the substance of the Ordinance such that it must be returned to the Planning Commission for further consideration?

V. STATEMENT OF FACTS

The property at issue in this case consists of approximately 1,300 acres located adjacent to the Mississippi River in St. John the Baptist Parish. Some thirty years ago, the property was purchased by Formosa Chemical Corporation ("Formosa") which had plans to develop a rayon pulp facility on the tract of land.[10] Prior to the

[10] R. 427, Par.16.

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Formosa purchase, the property consisted of several tracts of land which contained a variety of zoning designations, but none of which at that time were zoned industrial.[11]

In 1990, Ordinance 90-27 rezoned most of the Formosa property to I-3, an industrial zoning district permitting various industrial uses, including grain elevators.[12] The Ordinance additionally provided that the rezoning of some tracts of land would be to I-1 and B-2.[13] The proposed Ordinance 90-27 was submitted to the Planning and Zoning Commission, which held two public hearings and then favorably recommended the zoning request.[14]

A public hearing was then held before the Parish Council on the proposed Ordinance on April 19, 1990. During that public hearing, the council proposed to "amend the proposed zoning maps submitted under Ordinance 90-27 to reflect the following: 'Where ever an I-3 zone abuts an R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1.'" The vote in favor of the motion to amend was unanimously approved with one recusal.[15] Following approval of the motion to amend the maps attached to the proposed Ordinance, an additional public hearing was held at that same meeting on the Ordinance with the amendment, and Ordinance 90-27 was adopted by the St. John the Baptist Parish Council by a vote of eight yeas in support of enacting the ordinance and zero nays with one councilman recused.[16]

Ordinance 90-27 became effective five days after publication in the Official Journal of St. John the Baptist Parish.[17] Ordinance 90-27 was published in the

[11] Ord. 90-27, R. 1046. The prior zoning included tracts which were zoned B-1, C-1, and R-1.
[12] *Id.*; *see also* St. John the Baptist Parish Code of Ordinances § 113-405. R 1082-1083.
[13] Ord. 90-27, R. 1046. Portions of several tracts were rezoned from B-1 to B-2 along the batture, and portions of several tracts were rezoned from C-1 and R-1 to I-1.
[14] R. 301-322.
[15] R. 1292.
[16] *Id.*
[17] R. 1046.

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official journal of St. John the Baptist Parish on April 26, 1990, and thus became effective on May 1, 1990.[18]

Formosa eventually withdrew from the planned project, and sold the property to Robert Brothers for $6.7 million, who used the land primarily for farming.[19] The I-3 zoning which resulted from Ordinance 90-27, however, was never changed. Some thirty years later, Greenfield purchased the industrially zoned property for $40 million, with the intent to develop, in conjunction with the Port of South Louisiana, a state of the art $400 million grain terminal.[20] Shortly after that purchase, Plaintiffs began to challenge the planned grain terminal on numerous fronts, including the instant lawsuit.

VI. SUMMARY OF ARGUMENT

The Trial Court committed reversible legal error in misinterpreting the provisions of the St. John the Baptist Parish Home Rule Charter and Code of Ordinances, and then compounded that error by failing to recognize that the Parish's Home Rule Charter supersedes any ordinance to the contrary. St. John the Baptist Parish's Home Rule Charter grants the Parish Council the authority to pass any ordinance **with or without amendments**, at the final public meeting during which the ordinance is passed. The only limit placed on such amendments by the Home Rule Charter is that the amendment must not nullify the ordinance's original purpose or accomplish an object not consistent with the original purpose. The Charter does not require the Parish Council to send any such amended ordinance back to the Planning Commission, or anyone else, for approval or comment. In this case, the Parish Council made an amendment to Ordinance 90-27 at the regularly scheduled meeting of the Parish Council, and then passed the Ordinance, as amended, by a vote of eight yeas and one abstention.

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[18] R. 1050.
[19] R. 430.
[20] R. 439, 450.

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In holding Ordinance 90-27 null and void *ab initio*, the Trial Court erred in finding the provisions of Code of Ordinances § 113-76 applicable to the Parish Council's actions. Section 113-76 requires that changes to Chapter 113 of the Code of Ordinances (entitled "Zoning") and to the official zoning map be submitted to the Planning Commission for review and recommendation prior to enactment by the Parish Council. This review and recommendation was done with respect to Ordinance 90-27 prior to its enactment. Section 113-76 does not apply to an amendment made during the enactment of an ordinance as set forth in the Parish Home Rule Charter. The Trial Court committed legal error in finding that § 113-76 applied to the Parish Council's amendment of Ordinance 90-27 during its enactment.

Even if the Trial Court's application of § 113-76 to the Council's enactment procedures were correct, the Trial Court erred in treating a provision of the Code of Ordinances with equal dignity to a contrary provision of the Parish's Home Rule Charter. "Just as the Constitution is the supreme law of the state, home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation." *Montgomery v. St. Tammany Par. Gov't*, 2017-1811, p. 7 (La. 6/27/18), 319 So.3d 209, 217.

The Trial Court erred as a matter of law when it found that § 113-76 does not conflict with the provisions of the Home Rule Charter. The Charter provides the Parish Council may pass an ordinance, with or without amendments. The Code of Ordinances provides "no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation." While Greenfield contends § 113-76 does not apply to ordinances being considered by the Parish Council for enactment, to the extent it does, the conflict in language is irreconcilable—one provision says the council can pass an ordinance with amendments added at the public meeting, while the other

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says it cannot. The Trial Court's holding that these provisions are not in conflict was erroneous.

Finally, even if the Trial Court did not err in treating the Home Rule Charter and the parish Code of Ordinances as laws of equal dignity, the amendment to Ordinance 90-27 did not nullify or conflict with Ordinance 90-27's original purpose or significantly change the substance of the proposed ordinance and was thus in compliance with both laws.

VI. ARGUMENT

A. Legal Standard Applicable to Judicial Review of Zoning Ordinances

For an ordinance to be null and void *ab initio,* it must be illegal, such that it violates a parish's Home Rule Charter, a Louisiana statute, or the federal or state constitution. *Vieux Carre Property Owners Ass'n v. City of New Orleans*, 167 So.2d 367, 373 (1964) (explaining ordinance may not contravene Louisiana Constitution); *Kennedy v. Town of Georgetown*, 99-468, p. 3 (La. App. 3 Cir. 10/13/99), 746 So.2d 663, 664 (holding ordinance void *ab initio* for failure to follow statutory procedure); *McMahon v. City of New Orleans*, 2018-0842, p. 6 (La. App. 4 Cir. 9/4/19), 280 So.3d 796, 800; *writ denied*, 2019-01562 (La. 11/25/19) (holding ordinance violative of home rule charter void *ab initio*); *see also Miller v. Oubre*, 96-2022, p. 10 (La. 10/15/96), 682 So.2d 231, 236 ("[P]owers of a home rule government can be limited by its own home rule charter, the state constitution, or general state laws.").

The Louisiana Supreme Court has described the burden of proving the invalidity of a rezoning ordinance as an "extraordinary" one. The petitioner must establish that "a real or substantial relationship to the general welfare is lacking." *Palermo Land Co. v. Planning Comm'n of Calcasieu Par.*, 561 So.2d 482, 490 (La. 1990). If it appears that appropriate concerns for the public could have been the motivation for a zoning ordinance, it will be upheld. *Id.* at 492. Moreover, it is well-established that a presumption of validity attaches to zoning ordinances. This presumption applies to all

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zoning ordinances, including piecemeal and spot zonings. *Id*. at 491. Finally, debatable cases will be resolved in favor of the validity of the challenged zoning enactment. *Id*. at 493; *see also Save Our Neighborhoods v. St. John the Baptist Par.,* 592 So.2d 908, 910-14 (La. App. 5 Cir. 1991).

Zoning ordinances are presumed to have been adopted for valid purposes and the discretion of the government body will not be interfered with by the courts, unless it is clearly shown that the ordinance is arbitrary, unreasonable, and in violation of the enabling statute. *Sears, Roebuck & Co. v. City of Alexandria*, 155 So.2d 776, 780 (La. App. 3 Cir. 1963), *writ denied,*157 So.2d 230 (La. 1963); *see also Chapman v. City of Shreveport*, 74 So.2d 142, 145 (1954). The burden is on the party challenging the zoning ordinance to overcome this presumption of validity. *Id.* "The court will uphold the ordinance unless it is clearly shown to be incompatible with the enabling legislative act or the constitution. Doubtful cases are decided in favor of the validity of the zoning law." *Sears*, 155 So.2d at 780.

Zoning is a legislative function. The authority to enact zoning regulations flows from the police power of the various governmental bodies. *Four States Realty Co. v. City of Baton Rouge*, 309 So.2d 659, 665 (La. 1975); *Folsom Road Civic Ass'n v. Par. of St. Tammany,* 407 So.2d 1219, 1222 (La. 1981). "Because zoning falls under the jurisdiction of the legislature, courts will not interfere with their prerogative unless their action is palpably erroneous and without any substantial relation to the public health, safety or general welfare." *King v. Caddo Par. Comm'n*, 97–1873, p. 14 (La. 10/20/98), 719 So.2d 410, 418. Moreover, "[z]oning is not static. In recognition of this fact, Louisiana statutes specifically provide that the ***original regulations may be 'amended, changed, modified or repealed***.'" *Four States Realty,* 309 So.2d at 665 (emphasis added).

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B. This Court Should Apply a *De Novo* Standard of Review

This Appeal stems from the Trial Court's erroneous decisions in denying Greenfield's Motion for Summary Judgment, and its Motion for New Trial. Although the Trial Court couched its denial of Greenfield's Motion for Summary Judgment as one premised on the existence of a material fact rather than what it really was—an erroneous legal conclusion—that distinction makes no difference for purposes of the standard of review this Court must apply. "Appellate courts review the granting or denial of a motion for summary judgment *de novo* under the same criteria governing the district court's consideration of whether summary judgment is appropriate." *Alexander v. Acad. Dermatology Assocs.,* 22-75, p. 4 (La. App. 5 Cir. 6/8/22), 344 So.3d 179, 182 (citing *Valence v. Jefferson Par. Hosp. Dist. No. 2*, 13-48, p. 4 (La. App. 5 Cir. 10/30/13), 128 So.3d 455, 458; *Matthews v. Banner*, 08-339, p. 3 (La. App. 5 Cir. 10/28/08), 996 So.2d 1161, 1163).

With respect to the review of the denial of a motion for new trial, the appellate court typically employs an abuse of discretion standard. *Relan v. State Through Dep't of Health & Hosp.*,18-348, p. 10 (La. App. 5 Cir. 12/19/18), 262 So.3d 445, 453. "However, when a legal error has restricted or interdicted the fact-finding process, the abuse of discretion standard no longer applies, and [the appellate court] must apply a *de novo* standard of review. A legal error exists upon the application of incorrect principles of law that deprives a party of substantial rights." *Provosty v. Arc Constr., LLC,* 2015-1219, p. 7 (La. App. 4 Cir. 11/2/16), 204 So.3d 623, 629. In this case, the Trial Court committed legal error when it found that the provisions of the parish Home Rule Charter did not conflict with those of the Code of Ordinances. Thus, this Court should apply a *de novo* standard of review to the denial of Greenfield's Motion for New Trial.

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C. Section 113-76 of the Code of Ordinances Does Not Apply to the Parish Council's Amendment and Passage of an Ordinance

Chapter 113 of the St. John the Baptist Parish Code of Ordinances is entitled "Zoning." Article II of Chapter 13 addresses Administration and Enforcement. Within that article are different divisions which apply (1) generally, (2) to nonconforming structures and uses, and (3) to amendments. Within Division 3, § 113-76 provides as follows:

> The provisions of this chapter, including the official zoning map, may be amended by the parish council on its own motion, or on recommendation of the planning commission, but no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation. Before enacting an amendment to this chapter, the planning commission shall give public notice and hold a public hearing thereon as required herein.[21]

The amendment referred to in § 113-76 is an amendment to the zoning regulations (which are not at issue in this case) or an amendment to the official zoning map, but not an amendment to the ordinance which proposes a zoning change. This chapter focuses on amendments to zoning, but does not purport to provide the procedure for amending an ordinance. That procedure is detailed in the Home Rule Charter under Section IV (B), which provides for the enactment (and amendment) of ordinances.[22]

In this case, the ordinance proposing the zoning change, Ordinance 90-27, was sent to the Planning Commission which unanimously recommended the zoning change.[23] It is undisputed that the Planning Commission gave public notice and held two public hearings.[24] Moreover, it is undisputed that the Planning Commission study recommended changes to the then-existing zoning of the future Greenfield Property which would result in both I-1 and I-3 zoning.[25] After the Planning Commission completed this procedural step, the proposed Ordinance was forwarded

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[21] R. 1328.
[22] R. 1103-1104.
[23] R. 1291.
[24] R. 301-322.
[25] Howard Affidavit, Ex. 2; R. 1122-1123.

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to the Parish Council for public hearing and final passage. At that time, the Parish Council made an amendment to the proposed Ordinance, in compliance with the Home Rule Charter requirements for ordinances in general, to add a 300-foot I-1 buffer within the I-3 zone before final passage.[26]

The Trial Court, applying § 113-76, concluded that while the Parish Council may amend a proposed ordinance prior to enactment, if the amendment to the ordinance "affects a zoning classification," and the amendment was not considered by the planning commission, the ordinance is without effect. Under the Trial Court's analysis, every time an ordinance related to zoning undergoes an amendment, no matter how minor, the entire process must start anew, and the ordinance as amended must go back to the Planning Commission for review, public meetings, and ultimately a recommendation of approval or disapproval, and then back to the Parish Council for another public meeting and debate. However, this procedure is not contained in the Home Rule Charter or the Code of Ordinances, and the Trial Court erred in its application of § 113-76.

The First Circuit rejected a virtually identical argument in *Residents of Highland Road, LLC v. Parish of East Baton Rouge*, 2008-2542 (La. App. 1 Cir. 7/22/09), 2009 WL 2183146. Plaintiff argued that because the proposed zoning ordinance was verbally amended by one of the council members at the meeting, that the ordinance as amended must return to the planning commission for review before any vote could be held.[27] The First Circuit rejected that argument:

> [W]e disagree with RHR's contention that the Metro Council was required to resubmit the revised ordinances to the Planning Commission in this case. The Planning Commission had already reviewed the proposed changes in zoning on the property from A-1 to

[26] R. 1291-1292.

[27] The East Baton Rouge Unified Development Code (U.D.C.) was similar to § 113-76 and provided as follows:

> No ordinance or resolution adopting, amending, supplementing, changing or modifying any regulation or restriction or district boundary authorized by such laws to be made by the Metropolitan Council shall be passed by the Metropolitan Council until such ordinance or resolution has been submitted to and approved by the Planning Commission ... and provided further that an ordinance or resolution disapproved by the Planning Commission may be adopted by the Metropolitan Council by not less than eight (8) affirmative votes.

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

Id. at *9 (emphasis added).

The same result should be obtained here. The St. John the Baptist Parish Planning Commission in this case approved the zoning change on the property from R-1 to I-3 and, as to portions of the property, from C-1 and R-1 to I-1. Just as in *Highland Road,* the amendment did not affect the proposed zoning classification (I-3) but merely added a condition of a more restrictive I-1 buffer within the zoning classification already considered by the Planning Commission.[28]

Indeed, when the Planning Commission considered the proposed I-3 tracts wherein the 300 foot I-1 buffer was added, it considered the criteria applicable to the buffer's I-1 uses. The locational criterion for I-1 uses is explicitly encompassed within the locational criteria for the I-3 uses—both "shall be located along a federal or state highway, major parish roadway, or other transportation facilities such as a rail line or river access so that they do not generate a substantial increase in traffic along minor streets outside of areas zoned commercial or industrial." *Compare* § 113-370 (I-1 locational criteria), *with* § 113-410(1) (I-3 locational criteria).[29]

The evidence reflects that the official study of the Planning Commission, submitted to the Parish Council, considered this criterion for the I-3 tracts wherein the 300 foot I-1 buffer was added.[30] In addition, the zoning scheme for industrial uses is cumulative, with I-3 uses encompassing I-1 uses. *Compare* § 113-365 (I-1 Permitted Uses, listing specific uses), *with* § 113-384 (I-2 Permitted Uses,

[28] See Minutes of April 19, 1990 Parish Council meeting. R. 1291.
[29] R. 1077-1085.
[30] Howard Affidavit, Exhibit 2: Official Study of Rezoning (March 26, 1990), R. 1122-1123.

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encompassing all "uses allowed in Industrial District One (I-1)), *and* § 113-405 (I-3 Permitted Uses, encompassing "[a]ll uses not expressly prohibited").[31] Therefore, the rezoning criteria in § 113-79 (congestion, burden on public facilities, incompatibility of land use) cannot be negatively affected by including a buffer that is narrower in permitted uses than the catch-all I-3 zone the Planning Commission recommended.[32] Thus, just as in *Highland Road*, the amendment did not affect the zoning reclassification issue already considered by the Planning Commission.[33] Moreover, the amendment complied with the Home Rule Charter's mandate that it not "nullify [the ordinance's] original purpose or [] accomplish an object not consistent with its original purpose." Art. IV(B)(3)(g). All the amendment did was add an additional buffer to provide a greater degree of separation between the actual I-3 usage and the adjacent property owners. *See* § 113-364 ("[I-1 District] [r]egulations are intended…to protect nearby residential and commercial districts.").[34] The Trial Court erred in finding that § 113-76 required the amended Ordinance 90-27 to be reconsidered by the Planning Commission.

D. The Trial Court Erred in Finding the Home Rule Charter and Code of Ordinances Do Not Conflict

In denying Greenfield's Motion for New Trial, the Trial Court erred in finding the language of the Home Rule Charter and Code of Ordinances do not conflict. Had the Trial Court concluded that § 113-76 does not apply to the Parish Council's amendment and passage of an ordinance, then indeed the two provisions would not conflict. The Trial Court found, however, that § 113-76 applies yet does not conflict with the Home Rule Charter, finding instead that it "merely supplements

[31] R. 1077-1085.
[32] R. 1330.
[33] *Faubourg Marigny Improvement Association, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, is factually distinguishable because the zoning amendment there substantially changed the proposed Comprehensive Zoning Ordinance in a manner contrary to what the planning commission had recommended. It: (1) expanded the "gateway area" that the planning commission had previously scaled back; and (2) provided ***less*** restrictions on property use than the planning commission had considered.
[34] R. 1077.

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the provisions of the Parish Home Rule Charter providing ***additional requirements*** for a valid ordinance."[35] (emphasis added).

Plaintiffs cited § 113-76 to the Trial Court as support for the proposition that the Council cannot amend an Ordinance ***at the public hearing*** and, thereafter, vote on that Ordinance. Plaintiffs argued that § 113-76 requires the entire procedure of submission to the zoning commission, notice and hearing, and approval of the amended proposal to start anew. The Trial Court agreed, finding that § 113-76 merely supplements the Charter's provisions for passage of an ordinance.[36] However, the clear provisions of the Home Rule Charter itself eviscerate Plaintiffs' contention and the Trial Court's conclusion.

Home Rule Charter Article IV(B)(1) outlines the procedure for passage of an ordinance and provides "Except as provided in Section E hereof, an ordinance shall be enacted ***only*** in the manner provided in this Section."[37] (emphasis added).

Thereafter, the Home Rule Charter specifically allows the council to amend an ordinance at the public hearing ***without*** sending it back to the Planning Commission, or anyone else. Article IV (B)(3)(d) the Parish's Home Rule Charter provides as follows:

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

(emphasis added). The surrounding provisions of the Home Rule Charter make it clear that Article IV (B)(3)(d) is referring to the public meeting at which the Ordinance is being considered for final passage.

[35] R. 1555.
[36] R. 1555.
[37] R. 1103. Section E addresses the passage of emergency ordinances.

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Article IV of the Charter is entitled Ordinances and Resolutions. Section B addresses Enactment of an Ordinance. Paragraph (B)(3) provides the requirements for introduction, form, title, amendment, adoption, and publication of an Ordinance and outlines a detailed and specific procedure:

> a. Each ordinance shall be introduced in written form. . . .
>
> b. An ordinance may be introduced by any councilmember or by the parish president at any regular or special meeting of the council. After the ordinance has been introduced . . . the council shall cause the ordinance, or a summary thereof to be published . . . together with a notice of the date, time, and place, ***when and where it will be given a public hearing and be considered for final passage***. . .
>
> c. At the time and place so advertised, the ordinance or a summary thereof shall be read in full and, after reading all interested persons shall be given an opportunity to be heard.
>
> d. After all persons have been given the opportunity to be heard, the council may pass the ordinance ***with or without amendments*** . . .
>
> e. Any member of the parish council who shall have any substantial personal pecuniary interest in the adoption or passage of any ordinance, resolution, motion, or measure shall declare such fact to the parish council and shall refrain from voting on the same . . . .
>
> f. The effective date of any ordinance shall be prescribed therein, but shall not be earlier than five days after its publication in the official journal.
>
> g. A proposed ordinance shall not be altered or amended during consideration to nullify its original purpose or to accomplish an object not consistent with its original purpose.[38]

Section (b) requires notice of the public hearing at which the ordinance will be considered for final passage. Section (c) requires the ordinance or a summary be read, followed by an opportunity for interested persons to be heard. Section (d) then provides that after those persons have had the opportunity to be heard, the council can pass the ordinance with or without amendments.

The Parish Council meeting referred to in Article IV (B)(3)(d) is clearly the meeting at which final passage of an Ordinance is being considered, and nothing

[38] R. 1104.

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in the Home Rule Charter suggests that if the Ordinance is a zoning ordinance, additional rules apply.[39]

Article IV (B)(3)(g) of the Home Rule Charter contains ***some*** limitations on the scope of an amendment by providing "A proposed ordinance shall not be altered or amended during consideration to nullify its original purpose or to accomplish an object not consistent with its original purpose."[40] The Home Rule Charter's inclusion of provisions limiting the circumstances under which the council can amend an ordinance during consideration at the public hearing constitutes an express recognition of the fact that the Council indeed has the authority to amend the Ordinance during the council meeting and public hearing, without sending it to the Planning Commission, so long as the amendment does not alter the original purpose of the ordinance or accomplish an object not consistent with its original purpose. The amendment in this case merely added a buffer within the proposed I-3 zoning originally identified in the ordinance, so it did nothing to alter the original purpose of the ordinance, which was to rezone the identified property to I-3. The Council acted in accordance with the powers expressly provided under its Home Rule Charter, and the passage of Ordinance 90-27 was valid under the provisions of the Home Rule Charter.

The Trial Court reasoned that even though the Charter allows ordinances to be enacted with amendments, § 113-76 does not conflict because it only places limitations on the "effectiveness of the amendment."[41] Such an interpretation borders on the absurd and presents a clear conflict between the provisions of the Home Rule Charter and Code of Ordinances. The Home Rule Charter not only provides that the Parish Council can pass an ordinance with or without amendments but also provides

[39] Article III (C) of the Home Rule Charter outlines various administrative departments and agencies and recognizes the Planning Commission is to continue in effect but provides no specific or additional rules applicable to ordinances addressing planning or zoning issues. R. 1100.
[40] The addition of a 300-foot buffer did not nullify the original purpose of Ordinance 90-27 or accomplish any object not consistent with its original purpose.
[41] Judgment on Motion for New Trial, R. 1555-1556.

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how an ordinance becomes effective after its passage. Namely, once approved by the parish president, an enacted ordinance becomes effective on the later of the date stated therein or five days after its publication in the official Parish journal. Art. IV(C)(2).[42] Under the Trial Court's interpretation, § 113-76 still conflicts with the Home Rule Charter because it prevents a properly enacted ordinance from taking effect. The Trial Court's interpretation of these two provisions cannot be harmonized, and these two provisions clearly conflict with one another.

E. The Trial Court Erred in Finding § 113-76 Supplements the Home Rule Charter

The Trial Court also found that the two provisions do not conflict because the Code of Ordinances "merely supplements" the Parish Home Rule Charter by "providing additional requirements."[43] However, neither § 113-76 nor the Home Rule Charter address specific procedural requirements that apply when the Council amends a proposed zoning ordinance already reviewed by the Planning Commission. Where specific requirements do not exist, it is not the province of the courts to legislate them.

The record is clear that the original Ordinance 90-27 complied with § 113-76, having been reviewed and recommended by the Planning Commission. It is also clear that both the Code of Ordinances and the Charter are silent as to any procedure for the Council to amend a proposed zoning ordinance reviewed by the Planning Commission. However, the Charter does explicitly provide the Council authority and a procedure to amend ordinances in general, authority which necessarily includes zoning ordinances. Accordingly, the explicit procedure in the Charter must control and cannot be curtailed by the courts. *See Yenni v. Par. Council of Par. of Jefferson Through Evans*, 625 So.2d 301, 305 (La. App. 4 Cir. 1993), *writ denied*, 627 So.2d 642 (La. 1993) ("We will not, by implication, curtail the Council's

[42] R. 1105.
[43] R. 1555.

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authority. In our opinion[,] prohibitions restricting the Council's governing powers must be explicit.").

The Fourth Circuit Court of Appeals has addressed a similar procedural scenario. In *Yenni*, the home rule charter provided a specific procedure for adopting a budget ordinance each fiscal year but did not provide a procedure for amending the adopted budget. Therefore, when the parish council sought to amend the adopted budget, it did so in compliance with the charter's procedure for ordinance amendments in general. The trial court invalidated the ordinance amending the budget, finding it should have complied with budget-specific procedures in a state statute. The Fourth Circuit reversed, finding that the home rule charter and state statute only provided a procedure for adopting the budgets, but both were silent as to a procedure for amending the budget. The Fourth Circuit was clear that in the face of silence, it "will not legislate minimum requirements for budget amendments." *Id*. at 305. The court concluded, "The record is clear that the ordinance amending the budget was adopted in accordance with the Charter requirements for ordinances in general[,] and therefore[,] it is valid." *Id*. The Fourth Circuit refused to impose a restriction on the parish council's ordinary authority and procedure by implicitly reading budget-specific requirements into the budget's amendment.

Similarly, here, the Court should not implicitly read the requirements of § 113-76 into Ordinance 90-27's amendment. The original Ordinance 90-27 complied with the explicit procedural requirements of § 113-76 when it was sent to the Planning Commission for review and recommendation. Neither the Charter nor § 113-76 provide procedural requirements for an amendment to a proposed zoning ordinance already reviewed by the Planning Commission. Therefore, the court should not legislate those requirements, and the procedure that applies is the Charter's procedure for the Council to amend proposed ordinances in general.

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F. The Home Rule Charter Supersedes Any Conflicting Ordinance

The Trial Court erred when it focused its attention, not on the Home Rule Charter, but on the Code of Ordinances. After devoting detailed attention to the Code of Ordinances, the Trial Court summarily dismissed the contrary provisions in the Home Rule Charter:

> Nevertheless, the Section B(3)(d)[44] [of the Home Rule Charter] must also be considered in conjunction with the zoning-specific condition [found in the Code of Ordinances, not the Charter] that "no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation." § 113-76. Accordingly, while the parish council may amend a proposed ordinance prior to enactment so long as the amendment does not "nullify its original purpose or...accomplish an object not consistent with its original purpose," if the amendment makes a change to the official zoning map and it was not considered by the planning commission, the amendment is without effect. Art. IV, § B(3)(g); § 113-76.[45]

The Trial Court erred in affording § 113-76 of the Code of Ordinances "equal dignity" to the conflicting language of the Home Rule Charter. "Just as the Constitution is the supreme law of the state, home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation." *Montgomery v. St. Tammany Par. Gov't*, 2017-1811, p. 7 (La. 6/27/18), 319 So.3d 209, 217; *see also Miller v. Oubre*, 96-2022, p. 10 (La. 10/15/96), 682 So.2d 231, 236. The Louisiana Supreme Court has been clear in holding that home rule charters trump ordinances:

> [T]he wisdom of the particular ordinance and the procedure followed in its enactment are not the concern of the courts. If a challenged action does not violate the Charter or other pertinent law, it must be sustained; and, by the same token, the fact that a given ordinance or procedure is efficient, fair, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Charter.

[44] Art. IV B(3)(d) of the Home Rule Charter provides that once all interested persons have been given an opportunity to be heard at the time and place so advertised, "the council may pass the ordinance with or without amendments." R. 1104.
[45] R. 1395.

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Burstein v. Morial, 438 So.2d 554, 555 (La. 1983); *see also Morial v. Council of New Orleans,* 413 So.2d. 185, 187 (La. App. 4 Cir. 1982) ("[W]e conclude that local regulation is permissible if it is not in conflict with the Home Rule Charter or otherwise unconstitutional."). Home rule charters, as the supreme law of home rule charter jurisdictions, do not yield to conflicting ordinances, but the ordinance must yield to it. *See Fullilove v. U.S. Cas. Co. of N.Y.*, 129 So.2d 816, 826 (La. App. 2 Cir. 1961) ("[S]ince it is not a legislative act, but is a part of the organic law—the Constitution—it is the supreme law, and all legislative acts which might be found to conflict therewith must yield to it, rather than that it yield to them."). Moreover, the Louisiana Supreme Court has made it clear that a constitutional provision need not expressly overrule any contrary statutory provision in order to take precedence:

> Even more pertinent to this case, constitutional provisions by their superior nature need not specifically "repeal" extant conflicting statutes. As the Second Circuit Court of Appeal expressed in *Fullilove*[, 129 So.2d at 825]: "The constitution is the supreme law, to which all legislative acts and all ordinances, rules, and regulations of creatures of the legislature must yield." Furthermore, while repeals by implication are not favored, a constitutional amendment or provision ***operates to supersede or repeal all statutes that are inconsistent with the full operation of its provisions.***

Macon v. Costa, 437 So.2d 806, 810 (La. 1983) (*emphasis added).*

This is particularly true when the constitutional provision at issue (or in this case the Home Rule Charter) is clear to the extent that it preempts the field and provides the exclusive mechanism for the passage of an ordinance. "Except as provided in Section E hereof, an ordinance shall be enacted ***only*** in the manner provided in this Section."[46] Section 113-76 of the St. John the Baptist Parish Code of Ordinances which, as interpreted by the Trial Court, requires submission of any amendment to a zoning ordinance to the Parish Planning Commission is inconsistent with the operation of the Home Rule Charter which expressly allows

[46] Home Rule Charter Art. IV(B)(1). R. 1103 (emphasis added).

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any ordinance to be passed, with or without amendments, at the public hearing before the Parish Council.

The Trial Court relied in part upon the Fourth Circuit's decision in *Faubourg Marigny Improvement Ass'n v. City of New Orleans,* 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, in which the Fourth Circuit noted that the portion of the Municipal Code that allowed the council the power to amend a zoning ordinance without referral to the planning commission "neither supersedes nor obviates the very clear procedural restrictions embedded within sections 4724 and 4725 of Title 33 of the revised statutes, 'as well as other relevant portions of the Municipal Code specific to zoning ordinances.'"[47] The Trial Court's reliance on this language, however, is misplaced.

Initially, the *Faubourg* analysis is complete *dicta* as the only issue before that court was an appeal from a denial of an injunction, and the court explicitly declined to decide the issue of whether the amendment must have been referred back to the planning commission. More importantly, however, for purposes of the instant motion, the Faubourg court 1) was addressing two provisions of the Code of Ordinances, legislation of equal dignity, and attempting to harmonize them, and 2) the actions of the city were subject to the limitations of Title 33 of the Revised Statutes, which do not apply to St. John the Baptist Parish.[48] This Trial Court was not called upon to harmonize conflicting provisions ***within*** the Code of Ordinances as in *Faubourg* but to resolve a clear conflict between the Home Rule Charter and the Code of Ordinances—where the Home Rule Charter provisions must prevail.

The *Faubourg* court was guided by the well-recognized rule of statutory interpretation that the provisions of a specific statute govern over general rules, but

[47] R. 1398.
[48] Plaintiffs cited La. R.S. 33:4726(A) in their summary judgment briefing as a statute which requires a zoning authority to submit any "supplements, changes or modifications" to the planning commission, but that statute on its face applies only to municipalities. *See* Greenfield's Opp. to Mo. for Summary J., Sec. B.1; R. 1345-1347 (arguing that the statute applies to municipalities and not to St. John the Baptist Parish).

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that principle applies only to statutes of equal dignity and is not applicable in the instant case. In *Nitro-Lift Technologies, LLC v. Howard*, 568 U.S. 17, 133 S. Ct. 500, 184 L. Ed. 2d 328 (2012), the United States Supreme Court was called upon to review the Oklahoma Supreme Court's interpretation of a provision of the Federal Arbitration Act. The Oklahoma Supreme Court had reasoned that Oklahoma's statute addressing the validity of covenants not to compete must govern over the more general statutes favoring arbitration. In reversing the Oklahoma Supreme Court, the United States Supreme Court held:

> But the ancient interpretive principle that the specific governs the general (*generalia specialibus non derogant*) applies only to conflict between laws of equivalent dignity. Where a specific statute, for example, conflicts with a general constitutional provision, the latter governs.

Id. at 21, 133 S. Ct. at 504, 184 L. Ed. 2d 328.

In *Fridge v. City of Marksville*, No. 1:15-cv-1998, 2022 WL 10456076 (W.D. La. Sept. 21, 2022), the federal court for the Western District of Louisiana applied this same rationale to the interpretation of a Louisiana criminal statute. The Plaintiff urged the court to undertake an analysis using the *in pari materia* interpretive method to read Louisiana Revised Statutes 14:95.5 in light of Article 1, Section 11 of the Louisiana Constitution, but the court declined to do so:

> [I]f even we conceded that ambiguity plagues the language of the statute or that its application, as written, might invite an irrational reading, the Supreme Court instructs us to engage in this kind of interpretation only for a conflict of laws equal in dignity and for those acts of legislation passed around the same time. ... ***Thus, this interpretive method is not appropriate when reading a state statute in light of a state constitutional provision.***

Id. at 8 n.14 (citing *Nitro-Lift*, 568 U.S. at 21-22, 133 S. Ct. at 504, 184 L. Ed. 2d 328) (emphasis added).

In the instant case, the Trial Court was not called upon to address two provisions of equal dignity, but rather a provision of the Home Rule Charter and the Code of Ordinances. In comparing these two provisions, the rule of *generalia*

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specialibus non derogant does not apply, and the Home Rule Charter governs, meaning that the Parish Council was not required to submit the amendment to the Planning Commission.

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

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

Id. at 800.

St. John the Baptist's Home Rule Charter recognizes the limits of the Council's authority in providing: "The parish shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent

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with this Charter."[49] Further, "[t]he parish council may enact any ordinance necessary, requisite or proper to promote, protect, and preserve the general welfare, safety, health, peace and good order of St. John the Baptist Parish ***not inconsistent with*** the Constitution of the State of Louisiana or denied by general law or by ***this Charter***."[50] In the instant case, the Parish Council was without authority to enact a provision in the Code of Ordinances which contradicted the Home Rule Charter's provisions allowing for the amendment of an Ordinance during public hearing without referral to the planning commission. These conflicting provisions are not of equal dignity, and the provisions of the Home Rule Charter must prevail.

The Louisiana Supreme Court has recognized, "[p]rocedural requirements for the enactment of ordinances contained in Home Rule Charter are mandatory, and specific adherence thereto is required." *Hildebrand v. City of New Orleans*, 549 So.2d 1218, 1231 (La. 1989) (citing *Metropolitan New Orleans Chapter of the La. Consumers League, Inc. v. Council of New Orleans*, 349 So.2d 400 (La. App. 4th Cir.1977)). In this case, the St. John the Baptist Parish Council adhered to the procedures set forth in the Home Rule Charter and Ordinance 90-27 was a valid exercise of the Parish Council's authority

G. The Amendment Did Not Change Ordinance 90-27's Substance

Even if the Trial Court did not err in treating the Home Rule Charter and the parish Code of Ordinances as laws of equal dignity, summary judgment still should have been granted in favor of upholding Ordinance 90-27. If the laws are harmonized as the Trial Court found, an amendment to a zoning ordinance during the final meeting is still allowed where it does not nullify or conflict with Ordinance 90-27's original purpose, per Charter Article IV(B)(3)(g), or significantly change the substance considered by the Planning Commission, per

[49] Home Rule Charter, Art. II. R. 1094.
[50] Home Rule Charter, Art. III(A)(7)(b) (emphasis added). R. 1097.

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Faubourg and *Residents of Highland Road*. The record shows that the original purpose was retained and that the Planning Commission considered the substance of the amendment when it considered zoning the entire tract I-3.

Courts "may nullify zoning legislation if it is shown that the ordinance is ***clearly and palpably*** in contravention of the enabling act." *Faubourg*, 195 So.3d at 620 (internal quotations omitted) (emphasis added). Plaintiffs bear this extraordinary burden to show a clear and palpable breach – and rightly so, because nullifying a 30-plus-year-old ordinance is an extraordinary act. *See Palermo*, 561 So.2d at 490. Jurisprudence instructs that doubtful cases are to be decided in favor of the validity of the zoning law. *Faubourg*, 195 So.3d at 620; *Palermo*, 561 So.2d at 493.

Ordinance 90-27, as amended, is not clearly and palpably in contravention of the Home Rule Charter. The Charter allows amendments to ordinances at the final meeting so long as they do not "nullify [the ordinance's] original purpose or [] accomplish an object not consistent with its original purpose." Ordinance 90-27's original purpose was to zone the subject property I-3 and adding a 300-foot I-1 buffer was not inconsistent with that goal. No property owner obligated to comply with the more restrictive buffer has ever assailed the requirement.

Ordinance 90-27, as amended, is not clearly and palpably in contravention of § 113-76, which requires that the proposed ordinance be reviewed by the Planning Commission. The originally proposed Ordinance 90-27 was reviewed and recommended by the Planning Commission. There is no binding case law that defines when a subsequent amendment of the reviewed ordinance must go back to the Planning Commission. Two appellate courts have faced this factual scenario.

The First Circuit, in *Highland Road*, discussed *supra* on pages 12-13, found that because the amendment "did not affect the zoning reclassification issue already considered" it need not have been sent back to the Planning Commission. 2009 WL

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2183146 at *9. The Fourth Circuit, in *Faubourg*, looked at the issue only to provide guidance to the trial court in considering whether the ordinance should be sent back. *Faubourg*, 195 So.2d at 619. The Fourth Circuit commented that the ordinance should have been sent back if "the substance of the amendment in its scope and content" had not been previously reviewed. *Id*. at 623. There, even though the amendment clearly affected a zoning classification, the court could not conclude based on the evidence before it whether the Planning Commission had considered the terms of the amendment. Accordingly, the fact that an amendment affecting a zoning classification was not sent back to the Planning Commission is not determinative.

Here, as discussed *supra* on pages 12-14, the amendment did not impart any change on the subject property that the Planning Commission had not already considered. The I-1 criteria was wrapped into the consideration of I-3 zoning for that tract, and the Planning Commissions' official study is clear evidence on that point.[51] The burden is on Plaintiffs to show that Ordinance 90-27's amendment was "clearly and palpably" in contravention of enabling authority. Plaintiffs have pointed to no fact indicating that the amended ordinance was of such a substantial change that it should have been sent back to the Planning Commission.

VIII. CONCLUSION AND PRAYER FOR RELIEF

The Trial Court erred in its application of the provisions of the St. John the Baptist Parish Home Rule Charter and Code of Ordinances. Initially, § 113-76 does not even apply in this case to the Parish Council's addition of an amendment at the meeting during which Ordinance 90-27 was being considered for final passage. Even if this Court were to disagree, however, the Trial Court erred in finding that this section does not conflict with the Home Rule Charter which allows the Parish

[51] Howard Affidavit, Exhibit 2: Official Study of Rezoning (March 26, 1990), R. 1122-1123.

Council to amend any ordinance, without sending it back to the Planning Commission for additional consideration.

Further, and perhaps most significantly, just like the state constitution controls any statutory provision to the contrary, the provisions of the Home Rule Charter control over any conflicting ordinance. In this case, the Home Rule Charter provisions which specifically allow for amendments at the Parish Council meeting during which an ordinance is being considered for final passage, are irreconcilable with Code of Ordinances § 113-76, which, if it applies as the Trial Court held, requires re-submission of the proposed Ordinance after amendment. In the case of such conflict, the Home Rule Charter must prevail.

This Court should reverse the Trial Court's granting of summary judgment in favor of Plaintiffs, and enter summary judgment in favor of Greenfield, dismissing Plaintiffs' claims and demands with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing brief has been served upon all parties via electronic transmission, this 12th day of November, 2024, as specified below:

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FORTIETH JUDICIAL DISTRICT COURT

IN AND OF THE PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO.: 77305 **DIVISION "C"**

**THE DESCENDANT S PROJECT,
JOCYNTIA BANNER, AND JOYCEIA BANNER**

VERSUS

**ST. JOHN THE BAPTIST PARISH,
THROUGH ITS CHIEF EXECUTIVE OFFICER,
PARISH PRESIDENT JACLYN HOTARD, ET AL**

FILED: _____ _____
DEPUTY CLERK

**JUDGMENT REGARDING
MOTIONS FOR SUMMARY JUDGMENT**

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

Present: Pamela Spees, present with/for Plaintiffs

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

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

Based on the law and the pleadings,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' *Cross-Motion for Summary Judgment* is **GRANTED.** Ordinance 90-27 is declared null and void *ab initio* due to the Parish Council's failure to submit Ordinance 90-27's amendment to the Planning Commission for review and recommendation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Greenfield's *Motion for Summary Judgment* is **DENIED**.

**EXHIBIT
1**

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IT IS FUTHER ORDERED, ADJUDGED, AND DECREED that the Parish's *Motion for Summary Judgment* is **DENIED**.

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

J. Sterling Snowdy

Judge, Fortieth Judicial District Court

PLEASE NOTIFY ALL PARTIES

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FORTIETH JUDICIAL DISTRICT COURT

IN AND OF THE PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO.: 77305 **DIVISION "C"**

**THE DESCENDANT'S PROJECT,
JOCYNTIA BANNER, AND JOYCEIA BANNER**

VERSUS

**ST. JOHN THE BAPTIST PARISH,
THROUGH ITS CHIEF EXECUTIVE OFFICER,
PARISH PRESIDENT JACLYN HOTARD, ET AL**

FILED: _____ _____
DEPUTY CLERK

WRITTEN REASONS FOR JUDGMENT

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

Present: Pamela Spees, present with/for Plaintiffs

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

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

FACTUAL AND PROCEDURAL HISTORY

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

1. Property proposed to be rezoned from B-1 to B-2
2. Property proposed to be rezoned from C-1 and R-1 to I-3
3. & 4. Property proposed to be rezoned from R-1 to I-3
5. Property proposed to be rezoned from C-1 to I-1
6. Property proposed to be rezoned from R-1 to I-1[1]

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

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

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

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

LAW AND ANALYSIS

I. Summary Judgment Standard and Burden of Proof

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

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

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

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

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

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

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

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

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

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

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

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zoning classifications that include notice and public hearings of the Zoning and Planning Commission and the Parish Council." *Id.* at 910. The official zoning map "may be amended by the parish council on its own motion, or on recommendation of the planning commission, but no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation." § 113-76. An application to amend the official zoning map "shall be filed with [the] zoning regulatory administrator or [his] designee." § Sec. 113-78. "Each application shall be presented to the planning commission by the zoning regulatory administrator, or his designee, together with his recommendations on it. A report of the planning commission's recommendation and the zoning regulatory administrator or his designee recommendation shall be submitted to the parish council." § 113-78(7).

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

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

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This is not to say that the planning commission's approval is required. "Any amendment [to the official map] that has failed to receive the approval of the planning commission shall not be passed by the parish council except by the affirmative vote of two-thirds of the legislative body." § 113-78(8). What is unequivocally required, however, is that all proposed amendments to the official zoning map be submitted to the planning commission for review and recommendation. § 113-78. Consequently, any amendment to a proposed zoning ordinance which has not first been submitted to the planning commission is without effect. § 113-76.

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

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

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

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

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

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

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

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

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

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

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

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

Residents of Highland Road, LLC filed suit arguing in part that Councilman Addison's substitute motion substantially amended the proposed ordinances that were previously submitted to the Planning Commission to the extent that the Metro Council was required to resubmit the amended ordinances for the Planning Commission's review before voting on the matter. The First Circuit held that the revised amendment did not affect the zoning reclassification already considered by the planning commission, i.e., the requested change in zoning classification from A-1 to LC-1. Rather, it merely added the condition that certain deed restrictions be filed. Given the nature of the revision, the First Circuit did "not believe it was of such magnitude that a resubmission to the Planning Commission was required under U.D.C. § 4.05 and Metro Plan § 10.05, or any other provision. The proposed zoning classification had already been reviewed and rejected by the planning commission." *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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V. Missing survey map and conflicting zoning maps

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

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

> Regardless of the existence of purported copies of all or part of the official zoning map which may from time to time be made or published, the official zoning map, which shall be located in the parish engineer's office, shall be the final authority as to the current zoning status of all lands and waters in the unincorporated areas of the parish.

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

a. Corruption of the Parish President

Louisiana's ethical standards for public servants provide that:

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

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

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

La. R.S. 42:1118 (emphasis added). Plaintiffs argue that "Ordinance 90-27 was the product of, and instrumental to, an illegal scheme by the Parish President to commit extortion, money laundering, and abuse of power."[11] Indeed, "when there is room for two opinions, action is not arbitrary of capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659, 666 (La. 1974). Likewise, in the absence of fraud, "the authority of the courts in [zoning decisions] must bow to the police power of the elected governing body." *Save Our Wetlands, Inc. v. St. John the Baptist Par.*, 600 So.2d 790, 791 (La. App. 5th Cir. 1992), *writ denied*, 604 So.2d 1005 (a. 1992).

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

> The Parish President at the time the ordinance was passed was later convicted of extortion, money laundering, and violation of the Travel Act "resulting from the misuse of his official position as Parish President" which included his promise to the company seeking to locate on the Wallace tract that he would "use his authority to push through the needed rezoning."[12]

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

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

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

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

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

VI. Remaining claims for invalidation of Ordinance 90-27

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

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

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

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

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

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

CONCLUSION

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

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

J. Sterling Snowdy

J. Sterling Snowdy

Judge, Fortieth Judicial District Court

PLEASE NOTIFY ALL PARTIES

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40TH JUDICIAL DISTRICT COURT

FOR THE PARISH OF ST. JOHN THE BAPTIST

STATE OF LOUISIANA

NO.: C-77305 **DIVISION "C"**

THE DESCENDANTS PROJECT,
JOYCYNTIA BANNER, AND JOYCEIA BANNER
VERSUS
ST. JOHN THE BAPTIST PARISH,
THROUGH ITS PARISH PRESIDENT
JACLYN HOTARD, ET AL

FILED: _____ _____
DEPUTY CLERK

JUDGMENT ON MOTION FOR NEW TRIAL

This matter came before the Court on December 14, 2023, pursuant to a *Motion for New Trial* filed by St. John the Baptist Parish on August 15, 2023, that same day a separate *Motion for New Trial* was filed by Greenfield Louisiana, LLC.

Present: Samuel J. Accardo, on behalf of St. John the Baptist Parish

Paul Adkins & Clare M. Bienvenu, on behalf of intervenor, Greenfield Louisiana, LLC

Pamela Spees, on behalf of The Descendants Project

In both motions for new trial, St. John the Baptist Parish and Greenfield Louisiana, LLC (hereafter Defendants) make two arguments in favor of granting the new trial, that the previous ruling was clearly contrary to the law, specifically as to interpretation of the Code of Ordinance and St. John Home Rule Charter and alternatively that the court should have severed the amendment to Ordinance 90-27.

FACTUAL AND PROCEDURAL HISTORY

This action stems from a 1990 rezoning ordinance that the St. John the Baptist Parish Council passed unanimously with one recusal, on April 19, 1990. The Council enacted Ordinance 90-27, which set forth various zoning restrictions, namely:

1. Property proposed to be rezoned from B-1 to B-2.
2. Property proposed to be rezoned from C-1 and R-1 to I-3.

EXHIBIT 3

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3. & 4. Property proposed to be rezoned from R-1 to I-3.
5. Property proposed to be rezoned from C-1 to I-1.
6. Property proposed to be rezoned from R-1 to I-1.

In addition, prior to passing the ordinance an amendment was introduced by Councilmen Haston Lewis to place a 300 foot I-1 buffer whenever an I-3 district abuts an R-1 district.[1] This amendment would end up being the catalyst to the present litigation, as it was submitted outside of the formal submission process and was not provided to the planning commission for review and recommendation prior to being voted on.

In 2021, Greenfield purchased property affected by the zoning requirements of Ordinance 90-27, intending to build a grain elevator upon the property. On November 9, 2021, Plaintiffs filed a *Writ of Mandamus* followed by two amended petitions, to prevent Greenfield from building the grain elevator. This Court issued a judgment and written reason on August 4, 2023, in favor of Plaintiffs and declaring Ordinance 90-27 null and void *ab initio* due to the Parish Council's failure to submit Ordinance 90-27's amendment to the Planning Commission for review and recommendation[2]. Notice was issued on August 7, 2023. St. John the Baptist Parish and Greenfield both timely filed motions for new trial on August 15, 2023, within the delay period prescribed by law[3] bringing this matter back before this Court.

STANDARD FOR GRANTING A MOTION FOR NEW TRIAL

A timely motion for new trial is one of three methods by which a party can substantially alter the substance of a final judgment[4] and is reviewed on a case-by-case basis[5]. The Louisiana Code of Civil Procedure provides two bases upon which to grant a motion for new trial, peremptory and discretionary grounds. La. C.C.P. Art. 1972-1973. A new trial on peremptory grounds is required when: a) the verdict or judgment is clearly contrary to the law and evidence, b) when the party has discovered, since the trial, evidence important to the cause which could not, with due diligence, be obtained before or during the trial, or c) when the jury was bribed or behaved improperly so that impartial justice has not been done[6].

A showing that any of the peremptory grounds are met, obligates a trial court to hold a new trial. *Succession of Chisholm*, 53,771 (La.App. 2 Cir. 3/3/21); 314 So.3d 1056. The test for granting

[1] Plaintiff's *Cross-Motion for Summary Judgment* Exhibit P-2.
[2] *Written Reasons for Judgment* p.1 (August 4, 2023)
[3] La. C.C.P. Art. 1974.
[4] NFT Group, L.L.C. v. Elite Pools and Spas, L.L.C.
[5] Gaddy v. Taylor Seidenbach, Inc., E.D.La.2020, 446 F.Supp.3d 140, reconsideration denied 2020 WL 1848058, affirmed 838 Fed.Appx. 822, 2020 WL 7379389
[6] La. C.C.P. Art. 1972

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a new trial is far less stringent then for a JNOV, as it does not deprive a party of their right to have disputed issues resolved by a jury. *Pitts v. Louisiana Med. Mut. Ins. Co.*, 2016-1232 (La. 3/15/17); 218 So.3d 58 (citing *Martin v. Heritage Manor S. Nursing Home*, 00-1023 (La. 4/3/01), 784 So.2d 627, 631). In determining whether to grant the motion for new trial a court may evaluate the evidence without favoring either party and draw its own inferences and conclusions of fact. *Pollard v. Schiff*, 2013-1682 (La. App. 4 Cir. 2/4/15). A motion for new trial may be granted on discretionary grounds when there is good ground therefor.[7]

"Louisiana jurisprudence does not favor new trials especially when the judgement is supported by the record." *Fletcher v. Langley*, 631 So.2d 693, 695 (La. Ct. App.1994), writ denied, 635 So.2d 1139 (La.1994) (citing *Brown v. State Through DOTD*, 572 So.2d 1058 (La.App. 5 Cir.1990). Courts have broad discretion when determining whether to grant a motion for new trial, and that determination will not be disturbed absent abuse of that discretion. *Davis v. Wal–Mart Stores, Inc.*, 774 So. 2d 84, 93 (La. 2000). "Whether to grant a new trial requires a discretionary balancing of many factors." *Gaddy v. Taylor Seidenbach, Inc.*, 446 F.Supp.3d 140, 150 (E.D. La.2020), aff'd sub nom. *Adams v. Ethyl Corp.*, 838 Fed.Appx. 822 (5th Cir.2020) (citing *Gibson v. Bossier City Gen. Hosp.*, 594 So. 2d 1332 (La. App. 2 Cir. 1991)). "Although the grant or denial of a motion for new trial rests within the trial court's wide discretion, the court cannot set aside a judgment if it is 'supported by any fair interpretation of the evidence.'" *Chumley v. Magee*, 44,860, p. 11 (La.App. 2 Cir. 2/17/10); 33 So.3d 345, 352, writ denied, 2010-1125 (La. 9/17/10); 45 So.3d 1046 (citing *Campbell v. Tork Inc.*, 2003–1341 (La.2/20/04), 870 So.2d 968). The "discretionary power to grant a new trial must be exercised with considerable caution." *Rivet v. State, Dep't of Transp. & Dev.*, 2001-0961, p. 5 (La. 11/28/01); 800 So.2d 777, 781.

PEREMPTORY GROUNDS FOR NEW TRIAL

In their memorandums, both St. John the Baptist Parish and Greenfield argue that their motions for new trial should be granted on the basis that the prior judgment was clearly contrary to the law and evidence, primarily on the basis that this Court did not apply the proper statutory interpretation principles.

The prior judgment was granted after a cross-motion for summary judgment brought by the Plaintiffs. "A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and the mover is entitled

[7] La. C.C.P. Art. 1973

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to judgment as a matter of law." La.C.C.P. art. 966(A)(3). "The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law." La.C.C.P. art. 966(D)(1). "A fact is 'material' when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery." *Smith v. Our Lady of the Lake Hosp.*, Inc., 93-2512 (La. 7/5/94) (citing *Penalber v. Blount*, 550 So.2d 577, 583 (La. 1989)). The prior judgment turned on whether Plaintiffs produced sufficient material facts that proved the statutory procedures of Ordinance 90-27 enactment were not followed, and it was the finding of this Court that they had made such a showing. Now the present matter turns on whether the prior judgment was sufficiently supported by applicable provisions of law such that it could not be considered clearly contrary to the law and evidence or a miscarriage of justice.

1. Applicable Rules of Statutory Interpretation

Defendants allege in their motions for new trial that this Court did not apply proper principles of statutory interpretation to the provisions of the St. John the Baptist Home Rule Charter and Code of Ordinance, and therefore the Judgment granting Plaintiff's motion for summary judgment is clearly contrary to the law and evidence. In its memorandum, Greenfield argues that rather than harmonizing the provisions of the Home Rule Charter and Code of Ordinance, this Court should have allowed the Home Rule Charter to supersede the Code of Ordinance instead of treating them with "equal dignity."[8] Greenfield cites to *Montgomery v. St. Tammany Parish Government*, for the principle that "home rule charters are the supreme law of home rule charter jurisdictions, subordinate only to the constitution and constitutionally allowed legislation." *Montgomery v. St. Tammany Par. Gov't by & through St. Tammany Par. Council*, 2017-1811 (La. 6/27/18); 319 So.3d 209. Further they cite Art. IV(B)(3)(d) of the Parish Home Rule Charter, which reads:

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

But the language of the Parish Home Rule Charter and Code of Ordinance do not conflict, rather the Code of Ordinance merely supplements the provisions of the Parish Home Rule Charter providing additional requirements for a valid ordinance. The Parish Home Rule Charter only

[8] Greenfield Louisiana, LLC's *Memorandum in Support of Greenfield's Motion for New Trial* p. 4.

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allows that an ordinance may be passed with or without amendment and says nothing about the effectiveness of the amendment. Rather, the Code of Ordinance exists to provide additional requirements that supplement the Parish Home Rule Charter, but the provisions of both do not directly contradict one another.

"[W]here there are two permissible views of the evidence, the fact-finder's choice cannot be manifestly erroneous or clearly wrong." *Serpas v. Tulane Univ. Hosp. & Clinic*, 2013-1590 (La.App. 4 Cir. 5/14/14); 161 So.3d 726 (citing *Wallace v. Howell*, 09–1146, p. 2 (La.App. 4 Cir. 1/13/10), 30 So.3d 217, 218). For that reason, it is the finding of this Court, that the choice to apply both the Parish Home Rule Charter and Code of Ordinance is not contrary to the law or evidence.

2. Severing the Offending Amendment

Alternatively, Greenfield wishes the court to reconsider its judgment declaring the entirety of Ordinance 90-27 null and void, and to instead sever only the amendment to the Ordinance. In support of their argument in favor of severing the amendment, Greenfield cites a 1932 Louisiana Supreme Court case, *Bultman Mortuary Serv. v. City of New Orleans*. There the Louisiana Supreme Court articulated that where the portion to be removed is "distinctly separable from the remainder, and the remainder in itself contains the essentials of a complete enactment, the invalid portion may be rejected and the remainder will stand as valid and operative." *Bultman Mortuary Serv. v. City of New Orleans*, 174 La. 360; 140 So. 503 (1932). St. John's Code of Ordinances does in fact allow for severability, stating:

> The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, that unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Code, since they would have been enacted without the incorporation in this Code of the unconstitutional, invalid or unenforceable phrase, clause, sentence, paragraph or section.

§ Sec. 1-8. However later sections of the Code of Ordinance pertaining to zoning provide that "no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendations." § Sec. 113-76. Courts have consistently required strict compliance with the statutory procedures regulating enactment of zoning laws, failure of which is fatal to the validity of the zoning ordinance. *Schmitt v. City of New Orleans*, 461 So.2d 574 (La. App. 4 Cir. 12/18/1984). Greenfield argues that the amendment is distinctly separable from Ordinance 90-27, and that stripped of the amendment Ordinance 90-27 contains the essentials of a complete enactment. La. R.S. 24:177 provides that the text of a law is

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the best evidence of legislative intent[9], and further the "occasion and necessity for the law, the circumstances under which it was enacted, concepts of reasonableness, and contemporaneous legislative history may also be considered in determining legislative intent." La. R.S. 24:177(B)(2)(a).

Here, the amendment to the ordinance was not simply an additional provision to Ordinance 90-27 but rather a modification of those zoning restrictions as a whole, and therefore stripping only the amendment would be to circumvent the original intent of the Ordinance itself. This is further supported by the order in which the amendment and Ordinance 90-27 were passed. In this instance, the amendment to Ordinance 90-27 was passed prior to the passage of the Ordinance itself, meaning that the amendment was clearly an element so crucial to enactment of Ordinance 90-27 that it had to be added in prior to the passage of Ordinance 90-27. Thus, the suggestion that severing the offending language would leave Ordinance 90-27 a complete and valid enactment is not persuasive.

DISCRETIONARY GROUNDS FOR NEW TRIAL

In addition to the peremptory grounds for new trial alleged by Defendants, the motion for new trial, per La. C.C.P. Art. 1973, allows the Court to grant a new trial on discretionary grounds provided there are good grounds upon which to do so. A litigant is not entitled to an additional day in court unless there is a good and compelling reason to grant one. *Perkins v. Allstate Ins. Co.* Additionally, trial courts are vested with a great deal of discretion in ruling on motions for new trial[10] and new trials are disfavored where the contested judgment is supported by the record.[11]

Louisiana jurisprudence routinely cautions against the grant of new trial, despite the great discretion afforded to courts, unless "substantial justice requires it." *Taylor v. Sutton*, 6 La.Ann. 709, 710 (1851) see also *Succession of Robinson*, 186 La. 389; 172 So. 429 (1936), *Burthe v. Lee*, 152 So. 100 (La. Ct. App.1934). With justice being the primary consideration in granting a new trial on discretionary grounds, it is the finding of this court that there is insufficient evidence to support Defendant's motions for new trial. Principles of equity and justice require a greater showing then what Greenfield has alleged in its memorandum, and it would be fundamentally unfair to Plaintiffs to give Defendants another trial in this venue. "The grant of a new trial is not to be used to give the losing party a second bite at the apple without facts supporting a miscarriage

[9] La. R.S. 24:177(B)(1)
[10] *Gaddy v. Taylor Seidenbach*, Inc., E.D. La.2020, 446 F.Supp.3d 140.
[11] La. Code Civ. Proc. Ann. art. 1972(1) See also McInnis v. Bonton

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of justice that would otherwise occur." *Webster v. Hartford Accident & Indem. Co.*, 21-610, p. 3 (La.App. 5 Cir. 11/15/21) (citing *In re Gramercy Plant Explosion at Kaiser*, 04-1151, (La. App. 5 Cir. 3/28/06), 927 So.2d 492, 502).

CONCLUSION

While Defendants allege errors that necessitate a new trial, it is the finding of this Court that said errors are best characterized as competing interpretations of the law, and all parties' arguments are sufficiently rooted in the law such that a denial of new trial would not constitute a miscarriage of justice. For all the above reasons, it is the finding of this Court that justice would not be served by allowing Defendants to relitigate this matter, and for now the prior judgment must be maintained.

Based upon the law, the pleadings, the testimony, and posture of this case,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that St. John the Baptist Parish's *Motion for New Trial* is **DENIED**.

IT IS FURTHER ORDERED, ADJUDJED, AND DECREED that Greenfield Louisiana, LLC's *Motion for New Trial* is **DENIED**.

Judgment signed on the 9 day of Jan 2024, 2023 in Edgard, Louisiana.

J. Sterling Snowdy
Judge, Fortieth Judicial District Court

PLEASE NOTIFY ALL PARTIES