

40<sup>th</sup> JUDICIAL DISTRICT COURT  
PARISH OF ST. JOHN THE BAPTIST  
STATE OF LOUISIANA

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The Descendants Project, Jocyntia Banner,  
and Joyceia Banner,

Civil Action: 77305

*Plaintiffs,*

v.

Division C

St. John the Baptist Parish, through its Chief  
Executive Officer, Parish President Jaclyn  
Hotard; St. John The Baptist Parish Council;  
St. John the Baptist Parish Planning  
Commission; St. John the Baptist Parish  
Department of Planning and Zoning, through  
its Director, Rene Pastorek,

*Defendants.*

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Filed: \_\_\_\_\_

Deputy Clerk: \_\_\_\_\_

**PETITIONERS' REPLY TO EXCEPTIONS**

NOW INTO COURT, through undersigned counsel, come petitioners, The  
DESCENDANTS PROJECT, JOCYNTIA BANNER, and JOYCEIA BANNER, who  
respectfully submit this reply to the exceptions filed by Defendants, St. John the Baptist Parish,  
*et al*, and Greenfield Louisiana, LLC, a Delaware Corporation, intervenor.<sup>1</sup>

**SUMMARY**

Defendants and Intervenor have filed three exceptions. The first, the dilatory exception of  
unauthorized use of a summary proceeding should be denied for three reasons: 1) Mandamus is  
proper where, as here, the public officer is required to perform a non-discretionary duty. As the  
ordinance at issue here is an absolute nullity, the Defendants have no discretion as to whether or  
not to remove the illegal designation from any and all maps and relevant zoning documents; 2)  
Even in situations where the public official has discretion or where judicial interpretation is  
necessary, mandamus may issue where there has been an abuse of power or arbitrary or  
capricious action, fraud or bad faith; 3) Mandamus is also proper where, as here, the delay  
involved in ordinary proceedings would cause injustice.

Intervenor Greenfield Louisiana, LLC, has also filed an exception of no right of action,  
suggesting that Petitioners do not have a legitimate basis to challenge the ordinance because they

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<sup>1</sup> Greenfield Louisiana, LLC, filed a petition to intervene with this Court on Thursday, Dec. 2, 2021, though  
undersigned counsel did not get confirmation or a copy thereof until Monday, Dec. 6, 2021. While Greenfield has  
not inquired of petitioners whether they will agree to the intervention, petitioners state here that they do not oppose.

do not own the land that was rezoned. The Louisiana Civil Code provides, however, that a claim of absolute nullity may be brought by any person at any time. In addition, Louisiana courts recognize the right of a taxpayer to enjoin unlawful action by a public body.

Finally, the Intervenor has also asserted the exception of no cause of action suggesting that Petitioners have failed to state a legitimate basis upon which the ordinance should be nullified. Petitioners have set out in great detail the facts that rendered the ordinance an absolute nullity *ab initio* along with supporting evidence and exhibits, including evidence of the harms done to the Petitioners' family and community by the corruption that gave rise to, and was furthered by, Ordinance 90-27.

All of the exceptions should be denied.

The Intervenor grain elevator company and the Parish ask this Court to rule that it makes no difference whatsoever that numerous federal crimes of corruption were committed in connection with this rezoning. They cannot dispute that extensive corruption and several felonies occurred. They just say it makes no difference because the rest of the people involved were not convicted of any crimes. They would have this court disregard the fact that the Parish President, as the U.S. Fifth Circuit wrote, used his authority to "push through the needed rezoning," with a side deal that brought him hundreds of thousands of dollars, and was convicted of extortion and money laundering in connection with his abuse of that authority. *United States v Millet*, 123 F.3d 268, (5th Cir 1997).

If their position were accepted it would mean that local ordinances borne of, and instrumental to, extensive and confirmed corruption can stand as valid exercises of the police power. It would serve to diminish laws intended to protect the integrity of the legislative process against public corruption, conflict of interest, fraud, and deceit.

This Court should decline this invitation to ratify and perpetuate so thorough a violation of the public trust and rule that the rezoning ordinance, as both a product of and the means to commit numerous undisputable illegal acts, is an absolute nullity.

## **LAW AND ARGUMENT**

### **I. This Is an Authorized Use of the Summary Proceeding and the First Exception Should be Denied.**

"A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice." La. Code of Civ. Proc. art. 3862. While it is often the case that the writ of mandamus is sought to

compel a public officer to perform a non-discretionary duty required by law, the writ “may be issued even when there are other means of relief, if the ordinary legal forms will produce such delay that the public good will suffer and the administration of justice be hindered.” *Lanaux v. Recorder of Mortgages*, 36 La. Ann. 974, 975 (1884). The Louisiana Supreme Court has explained that this is because “[t]he object of a mandamus in our practice is to prevent a denial of justice or to avert the consequence of a defective remedy. It must be issued when there is no ordinary legal relief and justice requires that a mode of redressing the wrong shall be found.” *Id.* Violation of a specific ordinance, rule or regulation that prohibits such action can constitute an abuse of discretion. *Fire Prot. Dist. Six v. City of Baton Rouge Dep't of Pub. Works*, 2003-1205 (La. App. 1 Cir. 12/31/03, 3–4); 868 So.2d 770, 772–73, writ denied, 2004-0299 (La. 4/8/04); 870 So.2d 270 (“Although the granting of a writ of mandamus is considered improper when the act sought to be commanded contains any element of discretion, it has, nevertheless, been allowed in cases to correct an arbitrary and capricious abuse of discretion by public boards or officials.”) (collecting cases).

Mandamus can issue “even when judicial interpretation of the statute involved is necessary” or when the law “may require construction by the courts.” *Bd. of Trustees of Firemen's Pension & Relief Fund of City of New Orleans v. City of New Orleans*, 207 So.2d 168, 170 (La. Ct. App. 1968), writ refused, 252 La. 111; 209 So.2d 40 (1968). Moreover, “[w]hen fraud is distinctly and clearly alleged, technical objections to the pleadings should not avail.” *Bd. of Comm'rs of Orleans Levee Dist. v. Shushan*, 197 La. 598, 614; 2 So.2d 35, 40–41 (1941).

The Court is called upon in this case to determine that Ordinance 90-27 is an absolute nullity because it arose out of, and furthered, a corrupt scheme involving extortion and money-laundering. The absolute nullity of that ordinance results in the non-discretionary duty on the part of the Parish defendants to erase all references to the zoning designation and ordinance and restore the original designation as it stood before. Petitioners also detail the corruption and criminal offenses that also amount to forms of fraud, abuses of power, and arbitrary or capricious acts by a public official that warrant judicial intervention in a mandamus proceeding. Verified Petition, ¶¶ 15-62.

Moreover, the delay involved in bringing an ordinary proceeding would result in injustice. Petitioners have pointed to urgent circumstances surrounding the Intervenor’s attempts to construct a massive grain elevator on the property and the fact that it has already undertaken

ground-disturbing activities amid Petitioners' concerns about potential gravesites of ancestors once enslaved on the plantations that operated there. *Id.*, ¶¶ 101-160. The Petitioners point out the efforts they have made to bring this concern to the Parish authorities and other state authorities, to no avail. *Id.*, ¶¶ 136-143, 151-159. They were not even able to get it on an agenda, and one council member was even reported as saying "I do not talk about the grain elevator to no one." *Id.*, and ¶154.

The dilatory exception of unauthorized use of a summary proceeding should be denied.

## **II. Exception 2: Petitioners Have a Right of Action to Bring the Claim that Ordinance 90-27 is an Absolute Nullity.**

Petitioners have a clear right of action. "Absolute nullity may be invoked by any person or may be declared by the court on its own initiative." La. Civ. Code art. 7. Following the dictates of the civil code, courts have allowed third parties to bring challenges to parish and municipal re-zoning decisions and ordinances when claiming they are absolutely null. *See, e.g., NW St. Tammany Civic Ass'n v. Parish*, No. 2008-14871, 2008 WL 7984953 (La. Dist. Ct. Oct. 03, 2008); *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1 Cir. Nov. 9, 2011); *Davis v. Town of St. Gabriel*, 2001-0031 (La. App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied*, 2002-0771 (La. 10/14/02); 827 So.2d 420, and *writ denied*, 2002-0803 (La. 10/14/02); 827 So.2d 420; *Allen v. St. Tammany Par. Police Jury*, 96-0938, 690 So. 2d 150, 154 (La. App. 1 Cir. 2/14/97), *writ denied*, 97-0599 (La. 4/18/97), 692 So. 2d 455; *Neighbors First for Bywater v. City of New Orleans/New Orleans City Council*, 2017-0256 (La. App. 4 Cir. 12/13/17).

Apart from direct standing to bring a claim for absolute nullity, "Louisiana jurisprudence recognizes the right of a taxpayer to enjoin *unlawful* action by a public body." *E. Baton Rouge Par. Sch. Bd. v. State Through Bd. of Trustees of the State Employees Grp. Ben. Program*, 96-1793 (La. App. 1 Cir. 9/19/97, 4-5); 700 So.2d 945, 949, *writ denied sub nom. E. Baton Rouge Sch. Bd. v. State through Bd. of Trustees of State Employers Grp. Benefit Program*, 97-3116 (La. 2/13/98); 709 So.2d 758 (citing *Stewart v. Stanley*, 199 La. 146, 5 So.2d 531 (1941)). A taxpayer "may resort to judicial authority to restrain public servants from transcending their lawful powers or violating their legal duties in any unauthorized mode which would increase the burden of taxation or otherwise unjustly affect the taxpayer or his property." *Id.* A taxpayer has standing even if their interest "may be small and insusceptible of accurate determination." *Id.*

In addition to demonstrating how the Parish President's actions gave rise to an absolutely null ordinance, Petitioners also detail their interest as residents and owners of a business on property adjacent to the land that was illegally rezoned. Verified Petition, ¶¶ 6-7, 43-54, 60-62, 111-112, 130-143. This exception should be denied.

### **III. Exception 3 Should Be Denied Because Petitioners Have Stated a Cause of Action That the Ordinance Is Absolutely Null.**

As discussed in Petitioner's memorandum in support of their petition for mandamus, "[p]ersons may not be their juridical acts derogate from laws enacted for the protection of the public interest" and "[a]ny act in derogation of such laws is an absolute nullity." La Civ. Code art. 7. A juridical act is a nullity where it "derogate[s] from laws enacted for the protection of the public interest, violate[s] a rule of public order, or produce[s] a result prohibited by law or public policy." *Davis v. Parker*, 58 F.3d 183, 189 (5th Cir.1995). Sources of state's public policy are its Constitution, laws, and judicial decisions of court of last resort. *W.L. Slayton & Co. v. Newton & Morgan*, 299 F. 279, 280 (5th Cir.1924). Action for annulment of an absolutely null contract does not prescribe. La. Civ. Code art. 2032. An absolutely null contract "is deemed never to have existed" and the parties must be restored where possible to the situation that existed before the contract was made. La. Civ. Code art. 2033.

Louisiana courts have found ordinances enacted by parish and city governments in violation of their own laws to be absolute nullities. *See e.g., Gurley v. City of New Orleans*, 41 La. Ann. 75; 5 So. 659, 661 (1889) (describing city ordinance and contract in violation of a prohibitory law as absolutely null), *Davis v. Town of St. Gabriel*, 2001-0031 (La. App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied*, 2002-0771 (La. 10/14/02); 827 So.2d 420, and *writ denied*, 2002-0803 (La. 10/14/02); 827 So.2d 420 (agreement in derogation of state building permit requirements was an absolute nullity and variance issued based upon that agreement was unlawful and any construction pursuant to the invalid permit would be illegal), *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011 WL 5410169 (La. App. 1 Cir. Nov. 9, 2011) (noting ruling in earlier proceeding that district court had ruled conditional use permit void *ab initio*).

While these cases pertain to ordinances or actions taken by parish or municipal authorities in violation of their governing law and in some instances are procedural in nature, allegations of fraud and corruption in zoning proceedings or enactments are accorded a special treatment by the courts. *See McCann v. Morgan City*, 173 La. 1063, 1075; 139 So. 481, 485 (1932). *See also, Saint v. Irion*, 165 La. 1035, 1057; 116 So. 549, 556 (1928) (courts will "not

undertake to control the discretion of a public officer or board, unless arbitrarily or fraudulently exercised”), *Truitt v. W. Feliciana Par. Gov’t*, 2019-0808, p. 5 (La.App. 1 Cir. 2/21/20); 299 So.3d 100, 103–04 (“[W]hen there is room for two opinions, an action is not arbitrary or capricious when exercised *honestly* and upon due consideration, even though it may be believed an erroneous conclusion has been reached.”) (emphasis added).

This is because “fraud vitiates all things.” *Broussard v. Doucet*, 236 La. 217, 223; 107 So.2d 448, 451 (1958) (holding an act of exchange was void *ab initio* when obtained in violation of a prohibitory law). The law “furnishes a remedy against fraud, when exposed, whatever guise it may assume.” *Bd. of Comm’rs of Orleans Levee Dist. v. Shushan*, 197 La. 598, 613; 2 So.2d 35 (1941). “Fraud or bad faith with respect either to context or manner of arriving at a decision in an administrative zoning matter, is sufficient ground for judicial reversal of the decision.” 8A McQuillin Mun. Corp. § 25:417 (3d ed.) (internal citations omitted). *See also, e.g.*, Ronald J. Scalise Jr., Rethinking the Doctrine of Nullity, 74 La. L. Rev. 663, 718 (2014) (“the violation of the public fraud statute should also result in the violative act being considered an absolute nullity”).

The Louisiana Supreme Court, in holding “technical objections to the pleadings should not avail” “when fraud is distinctly and clearly alleged,” advised that “the widest latitude should be extended” to those seeking relief “since they are necessarily, to a considerable degree, uninformed of the precise relation existing among the persons charged with wrongdoing” and very often “are compelled to proceed in the dark.” *Bd. of Comm’rs of Orleans Levee Dist. v. Shushan*, 2 So.2d at 40–41 (remanding case for consideration of Board’s action to annul contract on grounds of fraud). The Georgia Supreme Court, which follows the same approach as Louisiana courts in terms of deference accorded to legislative discretion in zoning matters, has emphasized the “utmost importance” of the “integrity of the process of public deliberation” as the reason why claims of fraud and corruption are exceptions to the general rule of deference. *Wyman v. Popham*, 252 Ga. 247, 248; 312 S.E.2d 795, 797 (1984). Accordingly, courts there, as in Louisiana, “will not impose upon those claiming fraud or corruption in the promulgation and administration of zoning ordinances any standard other than that of the preponderance of the evidence.” *Id.* *See also*, La. Civ. Code art. 1957 (“Fraud need only be proved by a preponderance of the evidence and may be established by circumstantial evidence.”). *See also, Duffy v. Peneguy*, Sup.1920, 148 La. 407, 87 So. 25 (gravity drainage district’s decision is not subject to

court review except upon allegations of fraud or of such an abuse of discretion as would be equivalent of fraud, which must be pleaded); *Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary Drainage Dist.*, 239 U.S. 478, 484 (1916) (holding that law creating drainage district “solely with the view of deriving revenues” from an exempt property would be an arbitrary abuse of power, and disagreeing with Louisiana Supreme Court that no fraud had been alleged).

Intervenor suggests that the Parish President’s extensive corruption in the process of enacting the ordinance, which itself was critical for perpetrating the overall scheme for which he was found guilty beyond a reasonable doubt, has no bearing on the legality of the ordinance because the Parish Council is the legislative body that passed the ordinance. They suggest this despite the fact Millet signed it into law as Parish President, pursuant to the Home Rule Charter. As with how a bill becomes a law at the federal and state level, the signing by the Parish President is an integral part of our process of legislating in this country. The ordinance was not just a by-product of the corrupt scheme, it was a necessary component of the scheme that ensured the crimes could be carried out. If the position urged by Defendants and Intervenor is accepted, it would perpetuate and ratify the extreme corruption and illegality which gave rise to Ordinance 90-27.

As set out in the Petition, the Parish President pushed for Formosa to consider the property in question, assured the company he would “push through” the needed rezoning, and threatened nearby residents with expropriation to pressure them to sell their property. Verified Petition, ¶¶ 15-43. Once the land was rezoned, over fierce opposition from the community, the rest of the scheme could proceed. Formosa purchased the property in the same month and Millet continued to try to make more money off the deal, in addition to the \$200,000 kickback he got from the sale of the land to Formosa. *Id.*

Petitioners point to the extensive and fierce opposition to the rezoning because it shows that this rezoning would likely not have sailed easily through the Parish’s process, but for the “pushing” by Millet. Verified Petition, ¶¶ 15-62. The fact that the 2,000-foot distance criteria was disregarded in favor of the dramatically reduced 300-foot buffer zone also shows that the rezoning took some “pushing through,” demonstrating yet another element of arbitrariness in the process. *Id.* at ¶¶ 24-25.<sup>2</sup>

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<sup>2</sup> Intervenor wrongly suggests that the 2,000-foot distance requirement was not in effect at the time Ordinance 90-27 was adopted. However, the same notation to the provision that Intervenor references indicates that it existed in the 1988 Code of Ordinances as §33:76A.6. See §113-410, available at [http://sjbparish-la.elaws.us/code/coor\\_subptb\\_ch113\\_artiv\\_div15\\_sec113-410](http://sjbparish-la.elaws.us/code/coor_subptb_ch113_artiv_div15_sec113-410). The Parish’s Code Comparative table, which “gives

Intervenor also suggests that the Parish Council could have enacted the ordinance without Millet signing and ratifying it. But that's not what happened here. The Parish Council did not decide to enact Ordinance 90-27 irrespective of Millet's ratification. What did happen is that Millet urged Formosa away from the property it had originally been considering, brought the deal and the need to rezone the land to the Parish Council, pushed for the rezoning at each step of the way, and signed it into law when it came to him for approval per the Home Rule Charter. *Id.*

The fact that the land has been used for farming sugarcane in the intervening decades, combined with a series of conflicting "official" maps and zoning designations for this particular property only adds to the concern, confusion, and controversy surrounding this tract of land over the years. Intervenor references an "official zoning map" but does not even indicate to which map they are referring, nor could they. Intervenor Memorandum, at pp. 7-8

The Louisiana Supreme Court has emphasized that absolute nullities in derogation of laws enacted for the protection of the public interest are never susceptible of ratification and never prescribe. *See e.g., Whitney Nat. Bank of New Orleans v. Schwob*, 203 La. 175, 179; 13 So.2d 782, 783 (1943).

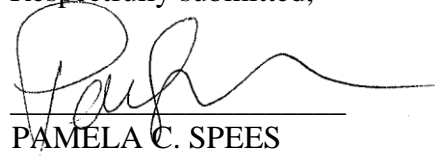
### Conclusion

For the above reasons and those set out in the Petition for Mandamus and Memorandum of Law in Support thereof, Petitioners respectfully submit that the Exceptions should be denied and a writ of mandamus issue to the Parish defendants ordering them to remove the unlawful zoning designations from all parish maps and documents.

Dated: December 14, 2021

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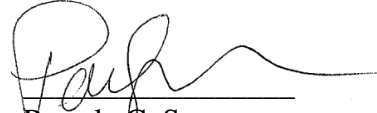
the location within [the current code] of those sections of the 1988 Code, as updated through May 26, 2009, that are included in the new Code," also confirms the provision existed at the time. Comparative table *available at* [http://sjbparish-la.elaws.us/code/coor\\_cocota1988co](http://sjbparish-la.elaws.us/code/coor_cocota1988co).



CERTIFICATE OF SERVICE

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

Lake Charles, Louisiana, this 14<sup>th</sup> day of December 2021.

  
Pamela C. Spees