

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

NO. 77305

DIVISION “C”

**THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER**

VERSUS

**ST. JOHN THE BAPTIST PARISH,
through its Chief Executive Officer,
Parish President Jaclyn Hotard, et al.**

FILED: _____

DEPUTY CLERK

MEMORANDUM IN SUPPORT OF GREENFIELD’S MOTION FOR NEW TRIAL

This memorandum is submitted by Intervenor Greenfield Louisiana, LLC (“Greenfield”), in support of its motion for new trial and/or reconsideration of the Court’s Judgment of August 4, 2023, granting the summary judgment motion of Plaintiffs the Descendants Project, Jocyntia Banner, and Joyceia Banner (“Plaintiffs”) and denying the summary judgment motions of Greenfield and St. John the Baptist Parish.

I. INTRODUCTION

Ordinance 90-27 was adopted by the St. John the Baptist Parish Council (the “Parish Council”) on April 19, 1990, by a unanimous vote of eight (8) yeas to zero (0) nays with one recusal and provided for the rezoning of certain tracts of land from R-1, single family residential, to I-3, an industrial zoning district. During the Council’s April 19 meeting, an amendment was proposed and approved which provided wherever an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1 (hereinafter, the “Amendment”). Thirty-one years later, Greenfield purchased the property for \$40 million with the intent to build a grain elevator storage facility.¹ Plaintiffs filed their initial Petition for Writ of Mandamus on November 9, 2021,

¹ Greenfield later sold the property to the Port of South Louisiana and is the current lessee of the property.

and subsequently filed two amended petitions. All parties filed cross motions for summary judgment, and the Court issued its Written Reasons for Judgment and Judgment on August 4, 2023.

Greenfield sets forth two grounds in support of its motion for new trial. First, the District Court failed to apply the proper principles of statutory interpretation to the applicable provisions of the St. John the Baptist Home Rule Charter and Code of Ordinances. Those provisions are in direct conflict, and rather than trying to harmonize them, the District Court should have recognized that the Home Rule Charter provisions which address the amendment of ordinances trump anything to the contrary in the Code of Ordinances.

Second, and in the alternative, Greenfield brings this motion to seek the Court's reconsideration of its judgment declaring the *entirety* of Ordinance 90-27 null and void due to the Parish Council's failure to submit the Amendment to the Planning Commission for review and recommendation. Greenfield asks this Court to revise its judgment by severing the Amendment from Ordinance 90-27 and allowing the remainder of Ordinance 90-27 to stand.²

II. STANDARD OF REVIEW

The Louisiana Code of Civil Procedure divides the grounds on which a motion for new trial may be granted into two categories—peremptory and discretionary. *Autin v. Voronkova*, 2015-0407 (La. App. 4 Cir. 10/21/15); 177 So. 3d 1067, 1069. Under Article 1972, a new trial must be granted when, *inter alia*, “the . . . judgment appears clearly contrary to the law and the evidence.” Under Article 1973, the Court has discretion to order a new trial “if there is good ground therefor.” “La. Code of Civ. Proc. art. 1973 allows a district court to use its discretion to order a new trial whenever it is ‘convinced by [its] examination of the facts that the judgment would result in a miscarriage of justice.’” *Horton v. Mayeaux*, 2005-1704 (La. 5/30/06), 931 So. 2d 338, 344 (alteration in original) (quoting *Lamb v. Lamb*, 430 So. 2d 51, 53 (La. 1983)). This discretion is “virtually unlimited,” and the district judge need only “state an articulable reason or reasons as to why he is exercising his discretionary powers.” *Horton*, 931 So. 3d at 344.

When adjudicating a motion for new trial under either of these articles, “the trial court may

² Greenfield makes no admission as to procedural defects in the Amendment and reserves all rights with respect to arguments related to the validity of the Amendment and Ordinance 90-27.

evaluate the evidence without favoring either party; it may draw its own inferences and conclusions. . .” See *Pollard v. Schiff*, 2013-1682 (La. App. 4 Cir. 2/4/15); 161 So. 3d 48, 61; *Joseph v. Broussard Rice Mill, Inc.*, 00-0628 (La. 10/30/00), 772 So. 2d 94, 104. In short, “[a] trial judge has broad discretion in the granting or denying of a Motion for New Trial.” *Jackson v. Bally's Louisiana, Inc.*, 2009-1574 (La. App. 4 Cir. 4/7/10), 36 So. 3d 1001, 1004.

This Court clearly has the authority to grant this motion, and there are overwhelming reasons to do so. As set forth below, the Court’s ruling is contrary to law and evidence. Further, good grounds exist for the Court to reconsider its judgment based on Greenfield’s alternative argument regarding severability to avoid the miscarriage of justice.

III. ARGUMENT

A. The Court failed to apply the Proper Principles of Statutory Interpretation

The Court erred in affording the provisions of the Code of Ordinances “equal dignity” to those 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 Parish Government*, 2017-1811 (La. 6/27/18) 319 So.3d 209, 217; *Miller v. Oubre*, 96-2022 (La. 10/15/96, 9-10), 682 So.2d 231, 236. See also, *Morial v. Council of City of New Orleans*, 413 So.2d. 185, 187 (La. App. 4th Cir.1982): “We conclude that local regulation is permissible if it is not in conflict with the Home Rule Charter or otherwise unconstitutional.”

The Home Rule Charter for St. John the Baptist Parish specifically allows the council to amend an ordinance at the public hearing without sending it back to the zoning commission. Art. 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.³

³ Art. II (A) of the Home Rule Charter identifies those acts requiring an Ordinance, and specifically includes any act which adopts or modifies the official map, plot, subdivision ordinance, regulations, or zoning plan.

In its Written Reasons for Ruling, the District Court recognized this provision, but concluded “Section B(3)(d) must also be considered in conjunction with the zoning-specific condition that *“no amendment [to the official zoning map] shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation.”* Citing § 113-76. The District Court relied in part upon the Fourth Circuit’s decision in *Faubourg Marigny Improvement Association, Inc. v. City of New Orleans*, 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, in which the Fourth Circuit noted that the portion of the Municipal Code that allowed the council the power to amend a zoning ordinance without referral to the planning commission “neither supersedes nor obviates the very clear procedural restrictions embedded within sections 4724 and 4725 of Title 33 of the revised statutes, ‘as well as other relevant portions of the Municipal Code specific to zoning ordinances.’” This Court’s reliance on this language, however, is misplaced.

Initially, as noted at the oral argument of the cross-motions, the *Faubourg* analysis is complete *dicta* as the only issue before that court was an appeal from a denial of an injunction. 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.

As addressed in Greenfield’s previous memorandum, the provisions of Title 33 do not apply to St. John the Baptist Parish. Further, this 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. The former vests the Council with the power to add an amendment to an ordinance at the very meeting during which the ordinance is being considered without referral to any other body. The latter requires an amendment to a zoning ordinance to be considered by the planning commission. In the case of such clear conflict, 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 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 (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 as follows:

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.⁴

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

[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. See, e.g., Erlenbaugh v. United States, 409 U.S. 239, 243-44 (1972) (noting that applying the *in pari materia* canon of statutory construction “makes the most sense when the *statutes* were enacted by the same legislative body at the same time.”); cf. Nitro-Lift Techs., L.L.C. v. Howard, 568 U.S. 17, 21-22 (2012). ***Thus, this interpretive method is not appropriate when reading a state statute in light of a state constitutional provision.***⁵

In the instant case, the District 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 specialibus non derogant* does not apply, and the Court must conclude that 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

⁴ *Id.* at. 21.

⁵ *Id.* at fn. 14.

charter. . . Louisiana jurisprudence is replete with decisions striking municipal and parish ordinances as unlawful, and therefore being considered as null and void and/or inoperative. In *Tardo v. Lafourche Parish Council*, 476 So.2d 997, 999 (La. App. 1 Cir. 1985), the First Circuit upheld a trial court’s finding that an ordinance (adopted by the Lafourche Parish Council after the budget without the approval of the Parish President) was invalid ***because it violated the Parish of Lafourche’s home rule charter mandates***. In *Schmitt v. City of New Orleans*, 461 So.2d 574, 577-78 (La. App. 4 Cir. 1984), this Court affirmed the trial court’s determination that several zoning ordinances passed by the City of New Orleans ***were null and void as they violated the City’s home rule charter***. In *Lafayette City Gov. v. Lafayette Mun. Bd.*, 01-1460 (La. App. 3 Cir. 5/8/02), 816 So.2d 977, the Third Circuit affirmed the trial court’s granting of a preliminary injunction after determining that the Lafayette Municipal Fire & Police Civil Service Board’s passage of a civil service rule concerning annual vacation and leave for policemen, which conflicted with its prior agreement with the Lafayette City Government concerning the specifics of said rule, ***violated the Lafayette City Government’s home rule charter***.⁶

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 with this Charter.”⁷ In the instant case, the parish council was without authority to pass an ordinance which contradicted the Home Rule Charter’s provisions allowing for the amendment of an Ordinance without referral to the planning commission. These conflicting provisions are not of equal dignity, and the provisions of the Home Rule Charter must prevail.

B. In the Alternative, the Court Should Sever the Amendment

In the alternative, the judgment declaring Ordinance 90-27 as null and void *ab initio* due to the Parish Council’s failure to submit the Amendment to the Planning Commission for review and recommendation should be revised, because the Amendment is severable from the main portion of Ordinance 90-27, which had been properly submitted to the Planning Commission.⁸ Specifically, the Amendment can be separated from the remainder of the ordinance without destroying the intention of the Parish Council to zone the subject property I-3, and the remainder of Ordinance 90-27 is valid and operational in the Amendment’s absence.

An invalid portion of an ordinance can be severed so long as that portion is independent and separate from the remainder of the ordinance such that the remainder stands as valid and operative.

⁶ *Id.* at 800.

⁷ Home Rule Charter, Art. II.

⁸ Plaintiff’s Second Amended Petition, Exhibit G.

In *Bultman Mortuary Serv. v. City of New Orleans*, 174 La. 360; 140 So. 503 (1932), the Louisiana Supreme Court found that even though a portion of a city ordinance was unconstitutional and therefore invalid, the invalidity did not affect the remainder of the ordinance:

Where the portion of an ordinance which is invalid is distinctly separable from the remainder, and the remainder in itself contains the essentials of a complete enactment, the invalid portion may be rejected and the remainder will stand as valid and operative.⁹

In that case, the Court found unconstitutional a portion of a city ordinance that afforded the city council the right to grant a mortuary permit at its unbounded discretion over an otherwise applicable prohibition against mortuaries within a certain commercial district. The Court rejected both the portion of the ordinance that prohibited mortuaries as well as the portion that afforded the city the right to permit a mortuary, because the portions of the ordinance were so related that one could not exist without the other.¹⁰ However, it found that the remainder of the ordinance, which prohibited other uses in the commercial district, was capable of enforcement in the absence of those portions concerning mortuaries and thus allowed the remainder of the ordinance to stand.¹¹

The Amendment is distinctly separable from the remainder of Ordinance 90-27, and the ordinance can exist without the Amendment. Ordinance 90-27 without the Amendment was considered by the zoning administrator, who advised the council that the re-zoning in Ordinance 90-27 was feasible under the then-existing regulations.¹² The zoning administrator identified no basis upon which the ordinance could not stand without the Amendment. There are no facts in the record indicating that Ordinance 90-27 was dependent upon the Amendment.

The remainder of Ordinance 90-27 in itself contains the essentials of a complete enactment, as all procedures were properly followed. Plaintiffs have raised no procedural issues that otherwise provide a basis to invalidate the ordinance.¹³

The Louisiana Supreme Court has also stated the test of severability to be whether the portion of an ordinance to be severed can be separated without destroying the intention manifested by the

⁹ *Id.* at 365, citing 43 C.J. pg. 547.

¹⁰ *Id.* at 365-66.

¹¹ *Id.*

¹² Greenfield's Motion for Summary Judgment, Exhibit 7, Affidavit of M. Howard (Exhibit 2, attached thereto).

¹³ Written Reasons for Judgment and Judgment (August 4, 2023).

enacting body. *Radiofone, Inc. v. City of New Orleans*, 616 So.2d 1243, 1245 (La.1993); *Gaudet v. Econ. Super Mkt., Inc.*, 237 La. 1082, 1092; 112 So.2d 720, 723 (1959); *Police Ass'n of New Orleans v. City of New Orleans*, 94-1078, p. 20 (La. 1/17/95); 649 So.2d 951, 965, *abrogated on other grounds by State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01); 779 So.2d 735. “To be capable of preservation, the remaining parts of an ordinance must contain an intelligible and valid ordinance capable of being placed in execution and conforming to the general purpose and intent of the enacting body.” *Radiofone*, 616 So.2d at 1249.¹⁴ Notably, none of these cases, including *Bultman*, *supra*, speculate that votes of the enacting body may have changed in the absence of the severed portion. The requirement is simply that intent is maintained and that the remainder is valid and operational in the severed portion’s absence.

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

Similarly, here, striking the Amendment from Ordinance 90-27 is more in keeping with the intent behind the ordinance than striking the ordinance altogether. Removing the Amendment from the ordinance simply reverts the buffer to that which would have applied in the original proposed ordinance. The intent behind Ordinance 90-27 was the rezoning of the identified properties for the purpose of facilitating industrial development in that location. The record is uncontradicted that the Parish Council followed appropriate procedures in furtherance of the intended I-3 use for this land.¹⁵

¹⁴ While the cited cases all involved constitutional infirmities, counsel is aware of no Louisiana cases that limits the severability rationale to cases involving constitutional issues. Indeed, the St. John the Baptist Code of Ordinances expresses a preference that the actions of the council be preserved by severing invalid portions of legislative materials. See Sec 1-8 of the Code of Ordinances.

¹⁵ In its Written Reasons for Judgment, this Court held that other procedural deficiencies alleged by Plaintiffs do not affect the validity of Ordinance 90-27.

The Council published the ordinance, as written without the Amendment, in the newspaper and held public hearings. It considered recommendations from the zoning administrator, the planning commission, and the public regarding the I-3 use. To now void the entirety of this long-standing permissible use of the property on the basis of a thirty-year-old procedural deficiency in an amendment that pertains to a more protective use invalidates the general intent of the government at that time: I-3 use of this property.

IV. CONCLUSION

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

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

New Orleans, Louisiana this 15th day of August 2023.


