

BEVERLY ALEXANDER; RISE ST. JAMES;
INCLUSIVE LOUISIANA; AND MOUNT
TRIUMPH BAPTIST CHURCH BY AND
THROUGH THEIR MEMBERS

VERSUS

ST. JAMES PARISH

NO. 24-CA-557

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES, STATE OF LOUISIANA
NO. 41,903, DIVISION "B"
HONORABLE CODY M. MARTIN, JUDGE PRESIDING

May 14, 2025

MARC E. JOHNSON
JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, Marc E. Johnson, Stephen J. Windhorst, and John J. Molaison,
Jr.

REVERSED AND REMANDED

MEJ
SMC
FHW

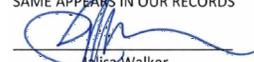
DISSENTS FOR THE REASONS ASSIGNED BY JUDGE MOLAISON

SJW

DISSENTS WITH REASONS

JJM

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Alisa Walker
Deputy, Clerk of Court

COUNSEL FOR PLAINTIFF/APPELLANT,
BEVERLY ALEXANDER, RISE ST. JAMES, AND INCLUSIVE LOUISIANA
AND MT. TRIUMPH BAPTIST CHURCH

Pamela C. Spees

Lisa W. Jordan

Clara J. Potter

Laura Derbonne

Tom Polites

COUNSEL FOR DEFENDANT/APPELLEE,
ST. JAMES PARISH

Victor J. Franckiewicz, Jr.

COUNSEL FOR INTERVENOR/APPELLEE,
KOCH METHANOL ST. JAMES, LLC

Neil C. Abramson

Greg L. Johnson

James L. Breaux

Clare M. Bienvenu

JOHNSON, J.

Plaintiffs-Appellants, Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church (collectively “Appellants”) seek review of the 23rd Judicial District Court’s June 18, 2024 judgment denying their appeal of the St. James Parish Council decision denying an appeal to the council of the Parish Planning Commission’s (“the Parish”) Tier 2 approval of Koch Methanol’s Land Use Application. The district court found that the Council followed the proper procedure for approval under the ordinance, and that their decision was not arbitrary and capricious. For the following reasons, we reverse the district court’s judgment, and the action of the Parish Council, and remand the matter to the Planning Commission for further proceedings.

FACTS AND PROCEDURAL HISTORY

Koch Methanol (“Koch”) has operated a methanol production facility in St. James Parish since 2013. On July 12, 2023, the company submitted a land use permit application proposing two separate projects to upgrade their existing facility. The Optimization Project required the installation of a pipeline to connect to an existing ethane pipeline owned by a third party. Most of the proposed pipeline connection is located in the Industrial-zoned area adjacent to the facility, but a 1000-foot section of the pipeline must run through a Wetlands area. The third-party underground ethane line, which generally runs north-south along the west side of Highway 3127, already traverses the Wetlands. The second proposed Oxygen Back Up Supply Project required Koch to apply for an air permit issued by the Louisiana Department of Environmental Quality (“LDEQ”). Koch avers that it voluntarily asked LDEQ to review its air permit application under the Prevention of Significant Deterioration (“PSD”) program, although, Koch contends, the proposed projects did not require that standard of review.

A few weeks later, the Parish’s Planning Commission issued a resolution¹

that read, in pertinent part:

WHEREAS, Koch Methanol St. James, LLC (“Koch”) applied for approval to increase the capacity of its existing methanol plant through an Optimization Project, and to implement an Oxygen Backup Supply Project, all located predominantly in an area designated in the Land Use Plan for Industrial Use and to a limited extent in an area designated as Wetlands, identified as #23-25 (the “Application”); and

WHEREAS, public notice of the Application was published in accordance with Section 82-25(g)² of the St. James Parish Code of Ordinances and public comments on the proposal were solicited; and

WHEREAS, the commission took up the matter at its meeting of July 31, 2023, when it received and considered a presentation by Koch about the Application, along with one citizen comment in favor of the project and none against, and questions posed by the commission members were responded to by Koch representatives; and

WHEREAS, the commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein, Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located in an area designated as Wetlands in the land use plan, such pipeline connection being a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located in the Wetlands area, in accordance with ordinance Section 82-25(c)(11). The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.

NOW, THEREFORE, BE IT RESOLVED under ordinance Section 82-25(f), that the planning commission hereby approves the Application, subject to the conditions stated below.

[. . .]

BE IT FURTHER RESOLVED that the planning commission finds that approval is appropriate under ordinance Section 82-25, with specific reference to the factors described in Section 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses [in] industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the

¹ The resolution entitled “A RESOLUTION APPROVING THE APPLICATION OF KOCH METHANOL ST. JAMES, LLC UNDER THE ST. JAMES PARISH LAND USE ORDINANCE, WITH CONDITIONS” was included in the July 31, 2023 Planning Commission Meeting Minutes.

² The Court did not find evidence of this notice pursuant to Subsection (g) in the record.

parish's ability to attract other beneficial development by virtue of the project's location in an industrial area and its distance from potentially impacted uses.

[. . .]

Appellants appealed the Planning Commission's decision a month later to the Parish Council. The Parish Council held a public hearing on the appeal. After presentations from Appellants and Koch, general public comments, and statements from several councilmembers on the record, the Council voted unanimously to reject the appeal.

Appellants then sought judicial review of the Council's decision at the 23rd Judicial District Court. Koch intervened in the matter, and all parties were given leave to file pre-hearing and post-hearing briefs. The district court ultimately denied Appellant's request to reverse the Council's decision. The court found that the Parish properly rejected Appellant's argument that Tier 3 review of the projects was required, and made the determination that the higher level of review would lead to "absurd results". Further, it found that the Council's decision were not arbitrary, capricious, or unreasonable. Appellants then filed this timely appeal.

ASSIGNMENTS OF ERROR

Appellants assign the following as error:

1. The Planning Commission and the Parish Council failed to following the clear instructions of § 82-25(e) of the St. James Parish land use ordinance to approve Koch Methanol's proposed project. The Parish violated the Ordinance when it did not apply the Tier 3/Subsection (e) review procedures in approving Koch's proposed "non-allowable use".
2. Given the clear and unambiguous language in §§ 82-25(c) and (e) that a pipeline is not a use "specifically listed as allowable" in areas designated as Wetlands, the district court erred when it considered the Parish's legislative intent in writing the Ordinance. And even if the court should have considered legislative intent, the evidence does not support the court's position that the Parish did not want all Wetlands projects to undergo Tier 3/section (e) review.
3. Considering "the language of the Ordinance demonstrates an intent to protect the Wetlands from unnecessary intrusion, stating that they 'should remain unoccupied, except for unique situations requiring a

location in the water”, the court erred when it held that it would constitute an absurd result for the Planning Commission and Council to review all proposed projects in Wetlands under Subsection (e).

4. The district court erred in failing to find that the Parish Council’s standardless review of Appellants’ appeal, as opposed to applying the standard provided by § 82-25(h), violated the Ordinance and Louisiana Constitution.

Appellants argue the Parish failed to follow its own ordinances, specifically Section 82-25 of the Land Use Plan. They maintain the Parish’s approval of the Koch Methanol land use application was void because the Planning Commission did not apply the Ordinance’s more stringent Tier 3 review process that is mandated under § 82-25(e) of the Land Use Plan for non-allowable uses, and because the Parish Council did not comply with the Tier 3 requirements when it considered Koch’s application at the appeal of the Planning Commission’s decision on September 27, 2023 at their public hearing.

Additionally, Appellants contend that the district court erred when it held that the Planning Commission did not need to follow § 82-25(e) of St. James Parish’s Land Use Ordinance, and erred by not holding the Parish Council’s decision to approve the planning commission’s recommendation without conducting their own independent review to be arbitrary and capricious, and in violation of the Constitution.³

Appellees, St. James Parish and Koch, argue that the Project was properly considered as a second-tier project under Section 82-25(f) (referred to as “Tier 2 review” by the parties and throughout this opinion), instead as a third-tier project under Section 82-25(e) (referred to as “Tier 3 review” by the parties and throughout this opinion). The Parish argues that “the plain text of the Ordinance demonstrates that the pipeline in the Wetlands is an ‘allowable use’”.

³ Appellants proffered Planning Commission meeting notes to show that the Parish applies the Ordinance inconsistently. They claim that subsequent applications have been processed in a manner consistent with their interpretation of the Ordinance.

The Parish maintains that the preliminary administrative determination that the ethane pipeline connection was an allowable use in the Wetlands was made because the ethane pipeline to which it was connecting was already located in the Wetlands.

Further, the Parish interprets the phrases under “Allowable Uses for Wetlands” in the Land Use Plan as follows: “Shown for information only” is a “non-regulatory concept which itself [does not] prohibit any use”; “should remain unoccupied” is aspirational, not mandatory, and should denote permissive versus mandatory language; and “except for unique situations requiring a location in the water” is an express exemption from the general prohibition against developing the Wetlands, even if the Land Use Plan prohibits pipelines in the Wetlands zone.

The Parish also urges that the Council was not mandated to perform an independent analysis of the proposed Project under Section 82-25(h), and the record contains evidence that supports the district court’s finding that the Planning Commission’s decision/recommendation was reasonable, not arbitrary and capricious, and there was a rational basis for the local authorities’ decision. It contends that the minutes Appellants proffered are not proof that it applied the Ordinance inconsistently. Last, the Parish avers there is no jurisprudential support for Appellants’ argument that the Parish Council’s decision to deny the appeal was invalid due to a lack of a standard of review, and the district court’s determination that interpreting the Ordinance as the Appellants suggest would lead to an absurd result.

Appellee Koch also contends that the Planning Commission and Parish Council correctly interpreted and applied the Ordinance’s Land Use Plan to the Project proposed by Koch. Koch further avers that the Ordinance is clear and unambiguous, and if it were ambiguous, then the Parish’s interpretation should be given great weight. Additionally, the company asserts that the project will not

cause the plant to violate any ambient air standards.⁴ Koch urges that the Planning Commission/Parish Council correctly applied the standard of review encompassed by Subsection (h) of the Land Use Plan. Finally, Koch argues that the Parish did not act arbitrarily and capriciously, and there was a rational basis for its decision to approve the application for the Project.

LAW AND DISCUSSION

Appellants and Appellees both argue that the Ordinance is clear and unambiguous, but, ironically, maintain opposing views of the directives it provides. The parties also reach different conclusions on the respective roles played by the Planning Commission, Parish Council, and the district court during the application and appeal process. For this Court, the proper interpretation of the language of a statute or Parish ordinance is a question of law requiring *de novo* review. *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416 (La. App. 5 Cir. 3/9/22), 337 So.3d 534, 540, *writ denied*, 22-587 (La. 6/1/22), 338 So.3d 491.

When interpreting the law, the starting point is the language of the written law itself. *Id.* at 541, *citing Dejoie v. Medley*, 08-2223 (La. 5/5/09), 9 So.3d 826, 829. The statutory and jurisprudential rules for statutory construction and interpretation are equally applicable to ordinances, rules, and regulations. *Perniciaro v. Hamed*, 20-62 (La. App. 5 Cir. 12/16/20), 309 So.3d 813, 826, *citing Rand v. City of New Orleans*, 17-596 (La. 12/6/17), 235 So.3d 1077, 1082.

The words of law must be given their generally prevailing meaning; words of art and technical terms must be given their technical meanings. La. C.C. Art. 11. “The meaning and intent of a law is to be determined by consideration of its provisions in their entirety, effect being given to all its provisions consistent with

⁴ Koch maintains that this Court cannot consider subsequent Planning Commission meeting minutes because they are not part of the record. Further, Koch maintains that the minutes do not prove that the Ordinance has been applied inconsistently because its Project can be distinguished from the other land use applications.

its express terms and conditions as well as the obvious intent to be drawn from the statute as a whole.” *Gautreau v. Bd. of Elec. Examiners of City of Baton Rouge*, 167 So.2d 425, 431 (La. App. 1st Cir. 1964). Inconsistencies and contradictions in a law are to be resolved, where possible, in such a way as will render the statute valid where such resolution may be made consistent with the spirit which prompted its enactment. *Id.* When a law is clear and unambiguous and its application does not lead to absurd circumstances, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. Art. 9. When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law. La. C. C. art. 10.

“All **laws** pertaining to the **same subject matter** must be **interpreted** *in pari materia*.” *Yolande Schexnayder & Son, supra* at 540. (Emphasis in original).

When possible, courts have a duty in the interpretation of a law to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter. *Id.* at 541.

Zoning is a legislative function, the authority for which flows from the police powers of governmental bodies. Article VI, § 17 of the 1974 Louisiana Constitution expressly grants to all local governments the power to enact zoning regulations. La. Const. art. VI, § 17. This specific grant of home rule authority must be interpreted broadly to preserve it from undue encroachment by the state.

St. Charles Gaming Co., Inc. v. Riverboat Gaming Comm’n, 94-2697 (La. 1/17/95), 648 So.2d 1310, 1316. Home rule powers, functions and immunities are to be construed fairly, genuinely and reasonably, and any claimed exceptions to them should be given careful scrutiny by the courts. *Id.*

The local government’s zoning authority is delineated in La. R.S. 33:4721, *et seq.*, and La. R.S. 33:4780.40, *et seq.* *New Cingular Wireless, PCS, LLC v. City-Par. of E. Baton Rouge*, 21-292 (La. App. 1 Cir. 12/30/21), 340 So.3d 1037,

1043-44. The governing authority may regulate and restrict the erection, construction, alteration, or use of buildings, structures, or land. La. R.S. 33:4722(A); La. R.S. 33:4780.41. *Id.* In reviewing a land use decision, the issue is whether the governing body's decision is arbitrary and capricious. *Willow, Inc. v. Jefferson Par. Council*, 05-754 (La. App. 5 Cir. 4/25/06), 928 So.2d 756, 760, *writ denied*, 06-1596 (La. 9/29/06), 937 So.2d 869.

A *prima facie* presumption of validity attaches to zoning board actions. *Metairie Club Gardens Ass'n, Inc. v. Par. of Jefferson*, 16-139 (La. App. 5 Cir. 12/28/16), 209 So.3d 1071, 1074. A reviewing court cannot substitute its own judgment or interfere with the zoning board's decision absent a showing that the board was arbitrary and capricious or abused its discretion. *Id.* The person who opposes a zoning board's decision bears the burden of proving that the decision was arbitrary, capricious, an abuse of discretion, or palpably unreasonable. *Id.* When the propriety of a zoning decision is debatable, it will be upheld. *New Cingular Wireless, PCS, LLC v. City-Par. of E. Baton Rouge*, 21-292 (La. App. 1 Cir. 12/30/21), 340 So.3d 1037, 1045.

"Arbitrariness" is the absence of a rational basis. *Castle Inv'rs, Inc. v. Jefferson Par. Council*, 472 So.2d 152, 154-55 (La. App. 5th Cir.), *writ denied*, 474 So.2d 1311 (La. 1985). The word "arbitrary" implies a disregard of evidence or of the proper weight thereof. *See Giambelluca v. Par. of St. Charles*, 96-364 (La. App. 5 Cir. 1/14/96), 687 So.2d 423, 429, *writ denied*, 96-3096 (La. 2/21/97), 688 So.2d 512, and *writ denied*, 97-0160 (La. 2/21/97), 688 So.2d 513, *citing Torrance v. Caddo Parish Police Jury*, 119 So.2d 617 (La. App. 2nd Cir. 1960). A decision of a commission is considered to be "capricious" when the conclusion is announced with no substantial evidence to support it, or the decision reached is one contrary to substantiated competent evidence. *Id.* Generally, the action of a governmental body is arbitrary and capricious and unreasonable if it bears no

relation to the health, safety, or general welfare of the public. *Cuny Family, LLC v. Par. of Jefferson*, 19-269 (La. App. 5 Cir. 12/26/19), 288 So.3d 235, 241.

The Parish has the discretion to approve or disapprove an application under its Land Use Plan, but it has no discretion in following the requirements of its own ordinance. *See Folsom Rd. Civic Ass'n v. Par. of St. Tammany Through St. Tammany Par. Council*, 425 So.2d 1318, 1320 (La. App. 1st Cir. 1983).

An aggrieved party may seek judicial review of an administrative agency's decision by appealing to the appropriate district court, functioning as an appellate court, in an adjudication proceeding. *Smith v. State Dep't of Health & Hosps.*, 39,368 (La. App. 2 Cir. 3/2/05), 895 So.2d 735, 739, *writ denied*, 05-1103 (La. 6/17/05), 904 So.2d 701; *New Cingular Wireless, PCS, LLC v. City-Par. of E. Baton Rouge*, 21-292 (La. App. 1 Cir. 12/30/21), 340 So.3d 1037, 1042-43. In reviewing the district court's judgment, no deference is owed by the court of appeal to factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal. *Id.* Thus, an appellate court sitting in review of an administrative agency reviews the findings and decision of the administrative agency and not the decision of the district court. *Id.*

The exclusive grounds upon which an administrative agency's decision may be reversed or modified on appeal are enumerated in La. R.S. 49:964(G), which provides:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;

- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

Id.

The ordinance at issue, St. James Parish's Land Use Plan, Code of Ordinances, § 82-25, declares itself to be a "master plan" as that term is used in La. R.S. 33:109 and 33:109.1. It also states: "To the maximum extent permissible by law, all such agencies, persons, and entities shall exercise decision making discretion in a manner consistent with the land use plan." Code of Ordinances, § 82-25 (c) contains a table which outlines the "Allowable Uses" for each "Land Use Category". Under "Industrial" zoning, "pipelines" is listed as an allowable use. Under "Wetlands", the allowable uses states: "Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18."

Upon *de novo* review of the Land Use Plan, we find that any proposed use of the Wetlands is generally a non-allowable use of the Wetlands, but that the proposed use may still be approved, pending Tier 3 level scrutiny by the Planning Commission, prior to final action by the Parish Council, as evidenced by the phrase "Shown for information only". We respectfully disagree with Appellees' interpretation of the phrase "unique situations requiring a location in the water . . ." — even if the Ordinance's drafters anticipated projects, such as the proposed pipeline installation, and intended the phrase "unique situation" to serve as a catch-all for future approved exceptions to the prohibition against development of the

Wetlands. The proposed project requires the pipeline to be underwater and to extend into the Wetlands area adjacent to the Koch plant in order to tie into an existing third-party ethane pipeline; a pipeline is a not a listed use within Wetlands zone according to subsection (c) of the Land Use Plan.

The Land Use Plan, St. James Ordinance 82-25 subsection (e) provides:

- (e) *Approval of uses not listed as allowable uses. Uses not specifically listed as allowable in a use category in subsection (c) of this section are prohibited unless the planning commission considers the use in accordance with subsections (g), (h) and (i), and the parish council approves the use.* Any such recommendation or approval shall be made on a case-by-case basis.[. . .]The planning commission shall not recommend a use for approval, and the parish council shall not approve a use, under this subsection unless it makes affirmative findings that there is a compelling public benefit, that the use is compatible with surrounding uses and adverse impacts of the use are inconsequential; or that approval is required as a matter of constitutional imperative or other vested legal right superior to this section. Any person aggrieved by a decision of the parish council under this subsection may appeal to a court of competent jurisdiction within 30 days of the decision of the parish council.

(Emphasis added).

Appellants have shown an ambiguity exists regarding what may be considered a “unique situation” that could ultimately become an approved use of the Wetlands, besides its conservation to protect the State’s coastal areas. However, because “pipeline” is not listed specifically as an allowable use in the Wetlands, the proposed installation is “prohibited unless the commission considers the use in accordance with subsections (g), (h), and (i), and the parish council approves the use.” The plain language of the Ordinance clearly requires that “uses not *specifically* listed as allowable in a use category”, per the table in subsection (c), must undergo the highest level of review by the Planning Commission, **and** be approved by the Parish Council.

The Parish Council, admittedly, did not perform the required Tier 3 level of review on the Project, although the Planning Commission’s resolution declares it

analyzed the Project under subsection (h) of the Land Use Plan. We agree with Appellees' assertion that the Ordinance charges the Planning Commission with the task of evaluating Tier 3 projects using the considerations outlined in subsection (h), but we find that its review was not adequate.

According to the Parish's briefs and pleadings, the only public comment offered in response to Koch's July 31, 2023 presentation before the Planning Commission was from a supporter of the Project. Subsection (e) directs the Commission to make affirmative findings regarding the following under subsection (h):

- (1) Whether the impacts of the proposed use would be substantially different from the impacts of allowable uses for the districts. Such impacts may include, but are not limited to, air and water emissions, noise, lighting, traffic (road and rail), effect on property values, and neighborhood.
- (2) The public benefits of the proposed use, such as job creation, expansion of the tax base, and enhancing the attractiveness of the parish for future development.
- (3) The physical and environmental impacts of the proposed use on the air, water, and land, with particular attention to whether the public benefits of the proposed use are commensurate with those impacts, and whether the environmental impacts may impair the ability of the parish to attract other beneficial development.
- (4) Vested property rights and other constitutional protections enjoyed by the proponent of the proposed use.

[. . .]

Although Commissioners' comments during the meeting acknowledged the possible concerns of constituents who may oppose the project, those concerns are appropriately addressed by hearing from **both** supporters and opponents of the proposed Project in undertaking the considerable task of analyzing the information presented and performing the balancing test, in this case, between preserving the environment and growing the local economy through industry, before recommending the project to the Parish Council for final approval. The appeal of

the Planning Commission’s recommendation to the Council, and the subsequent review of that approval by the Council, provided Appellants with an opportunity to engage with the Parish and Koch, present their concerns regarding the Tier 2 review by the Planning Commission, and argue for consideration of the Tier 3 review of the project.

Also, the existing pipeline that Koch wished to tie into is a nonconforming use as per the Land Use Plan. Subsection (k)(1) of the Plan states, “a use of land existing as of the effective date of the ordinance from which this section is derived and which would not constitute an allowable use under subsection (c) of this section shall be considered a nonconformity.” Subsection (k)(5) continues, “Any expansion of capacity or enlargement of physical facilities that would support the future expansion of capacity shall be considered as a new use subject to the provisions of this section.” Therefore, we find no merit in Appellees’ arguments that, since there is existing pipeline in that Wetlands area, lower Tier 2 level of review of the proposed project is appropriate, or the project is somehow grandfathered in under the approval of previous pipeline installations.

Next, in its brief, Koch cites to subsection (f) in support of its argument as follows:

(f) ***Planning commission consideration of certain allowable uses***. Notwithstanding subsection (d) of this section, the following uses or activities shall not be issued a building permit until approved by the planning commission (or by the parish council on appeal):

- (1) Any residential building containing three or more dwelling units.
- (2) Any nonresidential development exceeding 10,000 square feet of building area or sites three acres or more.
- (3) Any commercial or industrial development that requires a state or federal permit for air, water, solid waste, hazardous materials, or section 404 [of the Clean Water Act] Wetland/Rivers and Harbors Act permits. . . .

(Emphasis in original). This section does not indicate that any industrial development project that requires a state or federal permit in the Wetlands should

be considered using Tier 2 review. The permits referred to in the section are associated with federal legislation that regulates the discharge of dredged or fill material into and building structures in waters of the United States, including wetlands.⁵ Subsection (f) applies to Allowable Uses under 82-25(c), and the pipeline is not a “specifically listed” allowable use under Wetlands under subsection (c).

Last, we address Appellants’ assignment of error regarding the Parish Council’s “standardless review” of the Planning Commission’s recommendation or approval on appeal. “A zoning ordinance which contains no standard for the uniform exercise of the power to grant or deny applications for permits is unconstitutional. To be constitutional, a zoning ordinance must be sufficiently definite to notify citizens of their rights pursuant to the ordinance and must establish sufficiently definite and adequate standards to govern officials with respect to the uniform treatment of applications for permits under the ordinance.” *Summerell v. Phillips*, 282 So.2d 450, 453 (La. 1973), *citing* United States Constitution, Amendment V and Amendment XIV, Louisiana Constitution of 1921, Art. I, § 2, *Gaudet v. Economical Super Market, Inc.*, 112 So.2d 720 (La. 1959); *McCauley v. Albert E. Briede & Son*, 90 So.2d 78 (La. 1956).

We find that the Land Use Plan clearly states what documents should be included with Land Use applications, and which factors the Planning Commission is to consider while reviewing the applications submitted. The Ordinance also directs the Parish Council not to approve a use unless the Commission makes certain “affirmative findings.” *See*, subsection (e), *supra*. Whether the final recommendation should be left solely to the discretion of the commission, or if the commission should be required to verify the assertions of the applicants and the

⁵ *See* Section 404 of Clean Water Act, 33 U.S.C. § 1344; Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 403.

opponents of particular land uses via uninterested expert opinion, or if the commission should be required to make more specific affirmative findings to support its recommendations, is a decision to be made by the voters of St. James Parish. “The purpose of zoning is to reduce or eliminate the adverse effects that one type of land use might have on another.” *King v. Caddo Par. Comm’n*, 97-1873 (La. 10/20/98), 719 So.2d 410, 415. “It is not the province of the courts to take issue with the council. We have nothing to do with the question of the wisdom or good policy of municipal ordinances. If they are not satisfying to a majority of the citizens, their recourse is to the ballot—not the courts.” *Palermo Land Co., Inc. v. Planning Comm’n of Calcasieu Par.*, 561 So.2d 482, 491 (La. 1990), citing *State ex rel. Civello*, 97 So. 440 (La. 1923).

To sum, we find the Planning Commission’s approval of the Project and the Parish Council’s denial of Petitioner/Appellants’ appeal to be in violation of La. R.S. 49:964(G)(1) and (3). The Parish failed to follow its own ordinance, which mandated that the proposed Project’s application be evaluated per the standard of Tier 3 review. Last, because the proposed new pipeline section traverses the Wetlands, the Parish Council must approve the proposed new use pursuant to the Land Use Plan, St. James Code of Ordinances, Ordinance 82-25 subsection (e), *supra*.

DECREE

Considering the foregoing, we find that the plain language of Ordinance Section 82-25 of the Land Use Plan generally prohibits construction in the Wetlands, but that certain exceptions may be permitted once the Parish Planning Commission has conducted Tier 3 level review of the process and has recommended approval to the Parish Council. Because Tier 3 review should have been, but was not, used to analyze Koch Methanol’s land use application, we

reverse the decision of the Parish Council denying Appellants' appeal and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED

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JAMES; INCLUSIVE LOUISIANA; AND
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MOLAISON J., DISSENTS WITH REASONS

I respectfully disagree with the majority opinion for the following reasons.

It is significant that the main pipeline Koch seeks to connect has been previously approved by St. James Parish and has existed in the same proximity as other approved wetland pipelines for a long time, which pre-dates the plaintiff's current lawsuit. While the potential environmental impact of the extension is not squarely before the Court in this appeal, I note that the record contains no evidence that much larger pipelines, for example, have created adverse effects on the same area of wetlands. Moreover, despite properly advertising the proposed pipeline extension and allowing opponents to voice objections and concerns, the appellants admit that they did not object to Koch's land use application on an environmental or any other basis at the Planning Commission proceedings.

The St. James Parish Land Use Plan, Section 82-25(c) of the Parish Code of Ordinances, is clear that "unique situations requiring a location in the water" are "allowable uses" in wetlands. I find that the definition of an "allowable use" is on point and squarely addresses one of the main issues on appeal. I see no ambiguity in this language and would affirm the Council's interpretation of Section 82-25(c), as its decision has not led to an absurd result under the facts presented and is not clearly wrong. Here, tapping into the existing ethane

pipeline falls within the very definition of a unique situation, as the only logical way to physically approach the pipeline is through the wetland.

Although the appellants argue there has been an inconsistent interpretation of Section 82-25(c), no evidence supporting this claim was presented to the trial court. Accordingly, there is no basis for reaching such a conclusion on appeal.

For the reasons provided in the trial court's June 18, 2024 reasons for judgment, I find that Koch Methanol's proposed pipeline extension falls squarely in the category of "unique situations requiring a location in the water," as provided in "Wetland" provision of the St. James Parish Land Use Ordinance. I would affirm the trial court's ruling and reject the appellants' assertion that the proposed project's application should be evaluated under a Tier 3 standard.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. WISEMAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 14, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-557

E-NOTIFIED

23RD JUDICIAL DISTRICT COURT (CLERK)

HONORABLE CODY M. MARTIN (DISTRICT JUDGE)

CLARA J. POTTER (APPELLANT)

VICTOR J. FRANCKIEWICZ, JR.

(APPELLEE)

LISA W. JORDAN (APPELLANT)

CLARE M. BIENVENU (APPELLEE)

PAMELA C. SPEES (APPELLANT)

MAILED

GREG L. JOHNSON (APPELLEE)

JAMES L. BREAUX (APPELLEE)

NEIL C. ABRAMSON (APPELLEE)

ATTORNEYS AT LAW

701 POYDRAS STREET

SUITE 5000

NEW ORLEANS, LA 70139

LAURA DERBONNE (APPELLANT)

TOM POLITES (APPELLANT)

TULANE ENVIRONMENTAL LAW CLINIC

6329 FRERET STREET

SUITE 130

NEW ORLEANS, LA 70118