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COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 24-CA-493

THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, AND JOYCEIA BANNER,

Plaintiffs/Appellees

VERSUS

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

Defendants/Appellants

On Appeal from the 40th Judicial District Court, Parish of St. John the Baptist, State of Louisiana, Docket No. 77305, Division "C"

HONORABLE J. STERLING SNOWDY, PRESIDING

A CIVIL PROCEEDING

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STATEMENT OF THE CASE

Plaintiffs Jocyntia Banner, Joyceia Banner, and The Descendants Project commenced this litigation against St. John the Baptist Parish on November 9, 2021, to invalidate a 1990 zoning ordinance ("Ordinance 90-27" or "the Ordinance") that sought to rezone land adjacent to their neighborhood and homes in Wallace ("the Wallace tract"). The Ordinance purported to rezone the land from residential use to heavy industrial but did so in violation of state and parish law. Greenfield Louisiana L.L.C. ("Greenfield") intervened and now brings this appeal.[1]

Plaintiffs' suit identified a range of legal violations associated with the rezoning, ranging from violations of state and Parish law requiring planning commission review, public notice and comment, to a criminal extortion and money laundering scheme that resulted in conviction and imprisonment of the Parish President.

After extensive briefing and argument below, the District Court found that the Ordinance had been unlawfully enacted and was thus void *ab initio.* The Court's reasoning was that the Parish Council approved a last-minute change to zoning designations in violation of its ordinance requiring that any such changes must be subject to public notice and comment and planning commission review. Record on Appeal ("ROA") at 1406. This Court should affirm Judge Snowdy's ruling that the Ordinance was enacted in violation of the Parish's own law. In addition, as set forth below, the ordinance was also enacted in violation of state law, and this Court can affirm the District Court's judgment on that basis as well.

[1] As of the date of this filing, Greenfield's ownership of the land is unclear. On Nov. 20, 2024, the Port of South Louisiana voted to initiate dissolution of its PILOT (Payment in Lieu of Taxes) agreement with Greenfield whereby Greenfield purported to "sell" the land to the Port as a way of avoiding payment of *ad valorem* taxes.

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At the outset, Plaintiffs believe it necessary to bring to this Court's attention a material and misleading representation Greenfield makes for the first time in this appeal. At several points in its brief, Greenfield now suggests that the zoning designations grafted into Ordinance 90-27 at the last minute had somehow already been considered by the Planning Commission when it reviewed the original proposal for rezoning.[2] That is wrong. There is no evidence whatsoever to suggest that the Planning Commission reviewed the content of the amendment, which cut in half the buffers between residential and heavy industrial areas.

The District Court's decision should be affirmed.

PROCEDURAL HISTORY

Plaintiffs add the following particulars to supplement Appellant's account of the procedural history of this litigation: On April 28, 2022, after a hearing on the exceptions to Plaintiffs' complaint filed by the Parish and Greenfield, the District Court denied all exceptions and issued written reasons on May 10, 2022, in which Judge Snowdy concluded, *inter alia*, that "Louisiana courts have found that ordinances that violate the law are null and void *ab initio,*" and that Plaintiffs stated a cause of action. ROA at 717. Greenfield filed its application for a supervisory writ from this Court on June 10, 2022, which Plaintiffs opposed on June 24, 2022.

On June 29, 2022, a panel of this Court denied Greenfield's writ application and issued a written ruling in connection therewith. In that ruling, this Court observed that "zoning laws are in derogation of the rights of private ownership" and, as a result, "courts consistently require strict compliance with the statutory procedures regulating enactment of zoning laws" such that "[f]ailure to comply with such procedural restrictions… is fatal to the validity of the zoning ordinance."

[2] Original Brief of Greenfield at pp. 11, 13, 26-27.

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ROA at 974. This Court then held that Plaintiffs' allegations asserted "a valid cause of action for nullity of the Ordinance." ROA at 975.

Thereafter, Greenfield moved for summary judgment on January 6, 2023. Plaintiffs opposed and cross-moved for summary judgment on March 5, 2023, highlighting two key facts about the enactment of the Ordinance that had been clarified subsequent to discovery: 1) a zoning change was inserted into the Ordinance via a last-minute amendment without prior review by the Planning Commission and without public notice and hearing, which rendered the passage of the Ordinance null and void under applicable state and parish law; and 2) the last-minute amendment also cut in half a pre-existing buffer zone between heavy industrial and residential zones. ROA at 1274-76.

The District Court heard arguments on May 11, 2023. On August 4, 2023, the Court issued a final judgment in Plaintiffs' favor. In that ruling, the District Court declared Ordinance 90-27 null and void *ab initio* due to the Parish Council's failure to submit the amendment to the planning commission for review and recommendation prior to enactment of the Ordinance, in violation of the Parish's own law. ROA 1406; s*ee also, id*. at 1396 ("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.").

On August 15, 2023, the Parish and Greenfield filed motions for new trial, arguing mainly that the Parish's zoning ordinance requiring public notice and comment and planning commission review of all zoning changes conflicted with the Parish's Home Rule Charter which, according to Greenfield, allows for ordinances, generally, to be amended without being subject to such safeguards. Plaintiffs filed their opposition to the motions on December 6, 2023. The District Court heard argument on December 14, 2023, and on January 9, 2024, issued a ruling denying the motions for new trial. ROA at 1552; *see also id.* at 1557-58

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citing Webster v. Hartford Accident & Indem. Co., 21-610, p. 3 (La.App. 5 Cir. 11/15/21) ("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 of justice that would otherwise occur."). Greenfield then commenced this appeal.

ISSUE PRESENTED FOR REVIEW

The various issues for review identified by Greenfield can be summed up in one question: Whether the District Court erred in finding that Ordinance 90-27 was enacted in violation of state and parish law, when the Parish adopted last-minute zoning changes without public notice, comment or review by the Planning Commission.

STATEMENT OF ADDITIONAL FACTS

With regard to the passage of Ordinance 90-27, Plaintiffs here note several key facts:

1. **The Ordinance changed a zoning designation for tracts of land at the last minute, circumventing the requirements of public notice and comment, and review by the Planning Commission.**

Ordinance 90-27 was passed shortly before 9:15 p.m. on April 19, 1990, by the St. John the Baptist Parish Council. ROA 1292. It sought to rezone several residential tracts of land to heavy industrial (1-3) zones with 300-foot light industrial (I-1) buffers "within the I-3 zone" separating it from adjacent residential districts. *Id.* These 300-foot I-1 / light industrial zones were added shortly after 9 p.m. - just moments before the Ordinance was passed – as an amendment to the zoning map proposed in the Ordinance. *Id.* The amendment was offered without prior public notice or hearing, violating both state and parish law governing the enactment of changes to zoning maps and districts. *See* ROA 1302-11 (certified copies of public notices of hearing on proposed rezoning of the Wallace tract demonstrating the 300-foot I-1 buffer zones within the I-3 zone were not included in the public notice).

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In its brief, Greenfield states that that an "additional public hearing was held" following the approval of the amendment,[3] but fails to note that the minutes of that meeting reveal that the so-called "hearing" was commenced solely to enable the Parish Council's vote on the Ordinance with the last-minute amendment. ROA at 1292 (minutes of Parish Council meeting showing the "public hearing held" immediately after approval of the amendment and proceeded immediately to a vote). The introduction and adoption of the amendment and subsequent vote on the Ordinance, with the amendment, took less than 15 minutes. *See id* (showing that immediately after the Ordinance was adopted, the meeting was recessed for five minutes and then resumed at 9:20 p.m.).

The last-minute amendment was unlawful in and of itself as the Council circumvented the notice and hearing requirements for such zoning changes, as well as planning commission review. And, it also had a substantial impact: it reduced by half the pre-existing 600-foot buffer between heavy industrial zones and residential areas that had been enacted to apply parish-wide two years before.[4] ROA at 1268, 1276 (Plaintiff's summary judgment briefing describing the existence and effect of the 600-foot buffer enacted through Ordinance 88-68 intended to apply "parishwide"). The last-minute reduction of this buffer thereby rendered neighboring residents more exposed and vulnerable to air, noise, light, and sound pollution from the proposed facility.

For the first time in this litigation, Greenfield suggests in this appeal that the changes contained in the last-minute amendment had somehow been considered by

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[3] Greenfield Br. at 5.

[4] The Parish Council had enacted Ordinance 88-68 to require a 600-foot buffer between heavy industrial and residential areas less than two years before Ordinance 90-27 came before the Council. ROA at 1297-1300. The buffer was intended to apply "parishwide" even absent explicit mention in subsequent ordinance as explained in a decision of this Court. ROA at 1276 (citing *Save Our Neighborhoods v. St. John the Baptist Par.* 592 So. 2d 908, 914 (La. App. 5th Cir. 1991), *writ denied,* 594 So. 2d 892 (La. 1992)).

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the Planning Commission when it originally studied the proposed rezoning.[5] Greenfield points to the affidavit of then-Planning Director Mark Howard and his annexed "official study" of the rezoning to suggest that the I-1 zones contained in the amendment were "wrapped into the consideration of the I-3 zoning for that tract, and the Planning Commissions' official study is clear evidence on that point." This is false. The "official study" identifies *other* parts of the Wallace tract that were to be rezoned I-1 as part of this project, but in no way identified or addressed the late-added 300-foot I-1 buffers within the I-3 zones. ROA 1247-55 (Howard affidavit and exhibits). Nor are these 300-foot I-1 buffer zones listed in the three public notices of the ordinance that were published in advance of the hearing – which meant there could be no public comment or debate about them. ROA 1302-1311 (certified copies of public notices of hearing on Ordinance 90-27). And, the District Court, reviewing the record, specifically noted the fact that "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." ROA at 1400.

Greenfield's attempt to reverse-engineer the record evidence must be rejected.

2. Ordinance 90-27 was the product of, and instrumental to, an illegal scheme by the Parish President to commit extortion and money laundering.

The Parish President in office at the time the ordinance was passed was later convicted of extortion, money laundering, and violation of the Travel Act. His conviction resulted "from the misuse of his official position as Parish President," including his promise that he would "use his authority to push through the needed rezoning" for the Wallace tract. ROA 1268, 1278-80 (Plaintiffs' summary

[5] Greenfield Br. at 11, 13, 26-27.

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judgment briefing discussing the corruption conviction of Parish President and its connection to the passage of Ordinance 90-27). Plaintiffs argued below that the Ordinance was null and void because it was the product of, and instrumental to, an illegal scheme by the Parish President. *Id*.

In its August 4, 2023, summary judgment ruling, the District Court held that Plaintiffs failed to produce evidence showing that the Parish President "obtained anything of economic value, directly or indirectly, to aid in the accomplishment or the influencing the enactment of Ordinance 90-27." ROA at 1405. Plaintiffs included the certified record of the judgment and conviction order of the Parish President, ROA at 1313, as well as the decision by the United States Fifth Circuit Court of Appeal describing the record evidence and affirming the findings of the trial court. ROA at 1315. These findings demonstrated how the Parish President corruptly arranged to benefit financially from a land sale to the company, for which the land was being rezoned, and planned to use his influence to pressure neighboring landowners to sell their property to the company through his co-conspirator, which land was subsequently made part of the land to be rezoned. ROA at 1316; *See also* paragraphs 58-68 of ROA 1009-10 (Plaintiffs' Second Amended Petition, annexed to Greenfield's Motion for Summary Judgment as Exhibit 1) and ROA at 245-50 (affidavits of Harriet Banner, Jocyntia Banner, and Joyceia Banner, incorporated by reference in paragraphs 58-68 of the Second Amended Petition supporting the petition's allegations concerning the co-conspirator's efforts to force a sale of their family property to the company). The Parish President later signed the improperly passed Ordinance into law. ROA at 1287 (Millet's signature on Ordinance 90-27).

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3. Greenfield's Purchase Documents and One Official Parish Map Show the Land Zoned as Residential.

In its brief, Greenfield states that while the property at issue has been used "primarily for farming," the "I-3 zoning which resulted from ordinance 90-27" "was never changed."[6] This is not altogether clear. Greenfield's own purchase documents include an official survey, signed and approved by parish officials in 2006 – 16 years after Ordinance 90-27 was passed – which shows the land zoned residential.[7] In addition, one Parish map held out as "official" at the time this case was commenced, also showed the land designated residential.[8] Thus, there is no unfairness to Judge Snowdy's ruling, which restores the land to its residential zoning – because residential land is what Greenfield apparently purchased.

SUMMARY OF ARGUMENT

The District Court determined that a substantive, last-minute zoning change to Ordinance 90-27 rendered the ordinance null and void *ab initio* because the change was never subject to planning commission review or public notice and comment.

This appeal presents a straightforward question of statutory interpretation, which the District Court got right. The Louisiana Supreme Court has held that "the police power with reference to zoning *must be exercised* pursuant to the terms of the statute" enacted to govern zoning decisions. *State ex rel. Fitzmaurice v. Clay,*

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[6] Greenfield Br.at 6.

[7] *See* ROA 436-38, paras. 85-94, and ROA 439-40, paras. 99-102, of Plaintiffs' Second Amended Petition discussing Greenfield's purchase documents, which included the official survey of the property. Greenfield cites to these same allegations, which are based on the act of sale of the property to Greenfield, as the factual basis for the amount for which it purchased the property, and so waives any objection as to admissibility.

[8] *See* ROA 445-46, paras. 129-132, discussing Parish's online "Official Zoning Map" showing the area in question to be zoned as R-1/residential – a document admissible under either the public records exception to the hearsay rule, La. Code of Evid. Art. 803(8), or as non-hearsay because it is not offered for the truth of the matter asserted but to show that Greenfield should have been aware of questions surrounding the zoning status of the Wallace tract.

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208 La. 443, 454, 23 So. 2d 177, 181 (1945) (emphasis added). That statute was codified as Act No. 240 of 1926 and is now known as La. R.S. 33:4721 *et seq*.

The Parish's zoning provisions in the Home Rule Charter and Code of Ordinances must be understood in light of the state's law governing zoning, which are entirely consistent – because they must be. State and parish law governing zoning clearly require that any changes to zoning designations must be subject to public notice and comment, and submitted to a planning commission for review prior to consideration by the local governing body. Decisions from three appellate courts confirm this basic rule – including two of the cases Greenfield cites. *See* Greenfield Br. at 12-13, 22-23, *citing Residents of Highland Road, LLC v. Parish of East Baton Rouge*, 2008-2542 (La. App. 1 Cir. 7/22/09), 2009 WL 2183146, and *Faubourg Marigny Improvement Association, Inc. v. City of New Orleans,* 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606. These cases, as well as *Cush v. Bossier City,* 149 So. 2d 196 (La. Ct. App. 1963), from the Second Circuit, recognize, as the District Court did here, that an ordinance is null and void *ab initio* if amended to change zoning classifications without planning commission review.

Greenfield attempts to muddy the waters by a) suggesting that state law does not apply here; b) attempting to create conflicts between the Parish's Home Rule Charter and Code of Ordinances where none exist; and c) re-writing the factual record concerning the faulty amendment for the first time in this appeal. Greenfield invokes a number of cases which do not involve zoning at all; but such cases are helpful only inasmuch as they reiterate the basic rules of statutory interpretation and the general proposition that local governments must follow their own law. They do not account for how those rules must be applied in zoning cases where the constitutional grant of zoning authority must be exercised pursuant to Louisiana's zoning enabling act at La. R.S. 33:4721 *et seq*. Greenfield wants this Court to ignore the state's zoning law which is (also) clearly dispositive of the question on

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appeal – suggesting in a footnote that it does not apply to parishes. But the Louisiana Supreme Court has held that it does, and *this* Court has recognized that it applies to St. John the Baptist Parish in particular. *See Save Our Neighborhoods v. St. John the Baptist Par.,* 592 So. 2d 908, 910 (La. Ct. App. 1991), *writ denied,* 594 So. 2d 892 (La. 1992); *see also Morton v. Jefferson Par. Council,* 419 So. 2d 431, 433 n. 3 (La. 1982).

Ultimately, Greenfield does not want this Court to look at the state's zoning enabling act because that law is clear: a last-minute amendment like Ordinance 90-27's is procedurally invalid, rendering the Ordinance null and void. The District Court did not address this question – it was enough that the procedural impropriety violated the Parish's own law codified in its Home Rule Charter and Code of Ordinances. This Court can affirm the District Court's ruling in any of several ways: It can affirm on parish law alone as the District Court did; or it can affirm on the basis of state law; or it can affirm on the basis that the Parish's law incorporates state law. Or it can affirm on all of the above.

Finally, Greenfield's alternative argument fully collapses in on itself and further reveals the weakness of its main argument. At Sec. IV.G of its brief, Greenfield suggests that if the Charter and Code of Ordinances 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 *Fauberg* and *Residents of Highland Road.*" But, if the Charter and Code of Ordinances are in harmony as the District Court found – which they are – then the Ordinance was passed in violation of *both.*

The Charter's provision allowing for amendments to ordinances that do not change their substance pertains to amendments that have been properly and validly

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enacted – not last-minute zoning reclassifications which must undergo further planning commission review, pursuant to state and parish law. *Fauberg* and *Residents of Highland Road* both recognized that amendments which change zoning classifications are invalid when they have not been first subjected to public notice, comment, and planning commission review. Second, even if the last-minute amendment were not *procedurally* improper, it also changed the *substance* of the Ordinance as it re-designated portions of the I-3 zones considered and approved by the Planning Commission to I-1 zones. *See Cush v. Bossier City*, 149 So. 2d 196, 197 (La. Ct. App. 1963) (noting an amendment changing a classification from B-2, which had been previously reviewed by a planning commission, to B-1, was null and void even though it had been adopted by unanimous vote). The changes in this matter cut in half a buffer zone intended for the protection of parish residents.

Greenfield's attempt to rewrite the history of this amendment to now suggest that it had somehow been subject to the planning commission's original review, and therefore did not change the substance of the ordinance, is patently and demonstrably false.

Greenfield's arguments fail on all counts and the District Court's decision should be affirmed.

ARGUMENT

I. Standard of Review

Plaintiffs agree that the standard of review applicable to the central question presented in this appeal – whether the Parish passed the Ordinance unlawfully – is *de novo,* as the question arises out of a summary judgment proceeding, there are no facts in dispute, and the question is a legal one. *Advanced Benefit Concepts, Inc. v. Blue Cross & Blue Shield of Alabama*, 2023-01291 (La. 9/6/24), 392 So. 3d 308, 316, *reh'g denied,* 2023-01291 (La. 10/24/24).

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However, Plaintiffs take issue with Greenfield's attempt to confuse the issues and impose a higher – "extraordinary" – burden on Plaintiffs to prove the invalidity of the ordinance.[9] Because "zoning laws are in derogation of the rights of private ownership," Louisiana courts "require strict compliance with the statutory procedures regulating enactment of zoning laws." *The Descendants Project v. St. John the Baptist Parish,* No. 22-C-264 (La. App. 5 Cir. 6/29/22) at 4 (ROA 974) *citing Fauberg Marigny Imp. Ass'n, Inc. v. City of New Orleans,* 15-1308 (La. App. 4 Cir. 2016), 195 So.3d 606, 620. Unlike zoning ordinances that have been validly enacted, when a legislative body does not follow its own binding procedures, its decision is "not entitled to deference." *Kaltenbaugh v. Bd. of Supervisors,* 2018-1085, p. 18 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145.

Greenfield cites cases which are inapposite because they emphasize the high degree of deference courts must give to zoning decisions where procedural violations are not at issue – i.e. the wisdom or propriety of the *substance* of zoning decisions, not the *process* by which they were enacted. In those cases, the issue is "whether *the result* of the legislation is arbitrary and capricious." *Palermo Land Co. v. Plan. Comm'n of Calcasieu Par.,* 561 So. 2d 482, 492 (La. 1990) (emphasis in original). In contrast, the issue on appeal here is not concerned with the result of a validly enacted ordinance, but the procedural impropriety through which Ordinance 90-27 was passed. While a "parish may have the discretion to approve or disapprove [the subdivision] plan itself," it has "no discretion in following the requirements of its own ordinance." *Folsom Rd. Civic Ass'n v. Par. of St. Tammany Through St. Tammany Par. Council,* 425 So.2d 1318, 1320 (La. App. 1 Cir. 1983) (parish did not have discretion to violate requirement of notice by certified mail to adjacent landowners prior to approval of preliminary plan); *Schmitt v. City of New*

[9] Greenfield Br. at 8.

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Orleans, 461 So.2d 574, 577-78 (La. App. 4 Cir. 1984), *writ denied,* 464 So.2d 318 (La. 1985), and *writ denied*, 464 So.2d 319 (La. 1985) (failure to refer proposed zoning changes to planning commission as required by state and parish law rendered ordinances "ipso facto void").

II. The District Court's Ruling Should Be Affirmed Because the Last-Minute Amendment of Zoning Designations Violated State and Parish Law Requiring Public Notice and Comment, and Review by the Planning Commission.

The District Court grounded its ruling that Ordinance 90-27 is null and void in Parish law because it violated the Parish's law governing the proper procedure for enactment of zoning ordinances. As discussed below, the decision can and should be affirmed on that basis. However, state law also clearly applies and requires procedures parallel to – and incorporated into – those of the Parish. This Court can thus also find that state law renders the Ordinance null and void.

A. State Law Governing Zoning Changes and Amendments Applies to St. John the Baptist Parish.

The Louisiana Constitution of 1974 vests local government subdivisions with authority over zoning and land use regulations. La. Const. 1974, Art. VI, Sec. 17.[10] The Constitution defines "local government subdivisions" to include "any *parish* or municipality." *Id.* at Art. VI, Sec. 44 (emphasis added). The Louisiana Supreme Court, in a case addressing a zoning decision by a parish council, observed that this constitutional "grant [of zoning authority] is implemented in R.S. 33:4721 et seq." *Morton v. Jefferson Par. Council,* 419 So. 2d 431, 433 n. 3 (La. 1982). The Louisiana Supreme Court has also instructed that this "police

[10] La. Const. Art. VI, Sec. 17 states:

> *Subject to uniform procedures established by law,* a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained. (emphasis added).

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power with reference to zoning must be exercised pursuant to the terms of the statute" enacted to govern zoning decisions, i.e. Act No. 240 of 1926, and now known as La. R.S. 33:4721 *et seq*. *State ex rel. Fitzmaurice v. Clay,* 208 La. 443, 454, 23 So. 2d 177, 181 (1945).

La. R.S. 33:4721 *et seq* is Louisiana's zoning enabling act and was passed in 1926 to codify the standards and procedures to be followed by local governments that had been granted authority over land use and zoning in the Constitution of 1921, which then only applied to municipalities. St. John the Baptist Parish was empowered with zoning authority two years before the Louisiana Constitution was amended in 1974 to clarify that the authority extended to parishes as well as municipalities. In 1972, the Louisiana Legislature expressly authorized some parishes, including St. John the Baptist Parish, to undertake zoning and planning, when it enacted La. R.S. 33:4877. This provision was originally passed in 1972 to provide "any parish having a population of over twenty-three thousand in which there exists no municipality" the authority to "zone their territory, to create residential, commercial, and industrial districts, and to prohibit the establishment of places of business in residential districts." *See* ROA 1373-75 showing current and original language of La. R.S. 33:4877. In 1970, St. John the Baptist Parish had a population of 23,813, and no municipalities, and thus was included in this category of parishes acknowledged to have zoning authority by the legislature.[11] Today, the Parish still does not contain any municipalities having their own local government structures. The statute was amended in 2011 to make it specific to St. John the Baptist Parish.[12]

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[11] According to United States Census data, in 1970 St. John the Baptist Parish had a population of 23,813. Official Census publication available at https://www.census.gov/library/publications/1971/dec/pc-v1.html.

[12] Currently, La. R.S. 33:4877 reads in full:

> The governing authority of the parish of St. John the Baptist is authorized to zone its territory, to create residential, commercial, and industrial districts, and to

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The 1974 Constitution later made explicit that this authority extended to parishes as well, and the Louisiana Supreme Court has noted that the zoning enabling act applied to all local government subdivisions, including parishes. *See Morton,* 419 So. 2d at 433 n. 3; Indeed, as the Louisiana Supreme Court has observed, delegates at the 1973 Constitutional Convention wanted to ensure that, with respect to land use and zoning, "unbridled power – a 'blank check' – not be granted to local government units, but rather that there should be uniform procedures for the exercise of these powers." *Am. Waste and Pollution Control Co. v. St. Martin Par. Police Jury,* 609 So. 2d 201, 203-04 (La. 1992) (citing Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Vol. VII, 58th Days Proceedings, Oct. 2, 1973, pp. 1536-49 and noting that La. R.S. 33:4721 et seq provided "uniform procedures for municipalities" and also applied to parishes specially granted zoning authority).

Despite this clear recognition by the Louisiana Supreme Court – "the ultimate arbiter of the meaning of laws of this state"[13] – that the state's zoning enabling act applies to local government subdivisions, including parishes, Greenfield has suggested in briefing below and in footnote 48 of its Original Brief to this Court that Louisiana's zoning requirements applied only to municipalities. Greenfield's argument is wrong, and borders on the frivolous, given the wealth of binding, dispositive authority to the contrary. The District Court never addressed this point, because the amendment clearly violated the Parish's own law, which is necessarily consistent with, and indeed incorporates, state law.

> prohibit the establishment of places of business in residential districts. No zoning ordinance or creation of districts pursuant to the authority herein shall interfere with or hinder the operation of any existing public utility facilities, whether publicly or privately owned. The members of the governing authority attending zoning meetings shall be paid a twenty-five dollar per diem not to exceed eighteen meetings in any calendar year.

[13] *Benjamin v. Zeichner,* 2012-1763 (La. 4/5/13), 113 So. 3d 197, 201.

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Fully in line with the Supreme Court's pronouncement, Louisiana courts have long applied the procedural requirements governing the enactment of zoning ordinances in La. R.S. 33:4721 *et seq* to parishes. *See*, *e.g., King v. Caddo Par. Commn.,* 719 So. 2d 410, 416 (La. 1998) (noting that "Louisiana's zoning enabling act, La. R.S. 33:4721 also confers upon local governments the authority to enact municipal zoning regulations" and describing Caddo Parish as "one example of a municipality where the planning commission also serves as the zoning commission"); *Morton v. Jefferson Par. Council,* 419 So. 2d 431, 435 (La. 1982) (majority and dissenting opinions referencing applicability of provisions of La. R.S. 33:4721 *et seq.* to parish ordinance); *St. Martin Par. Govt. v. Champagne,* 304 So. 3d 931, 942 and n. 1 (La. App. 3d Cir. 2020), *writ denied,* 303 So. 3d 1038 (La. 2020) (holding pursuant to La. R.S. 33:4728 that Parish was "proper party to institute an action to restrain or correct any ordinance violations" of La. R.S. 33:4721 through La. R.S. 33:4729); *Prescott v. Par. Of Jefferson,* 694 So. 2d 468, 471 (La. App. 5th Cir. 1997) (conducting judicial review of variance granted by Parish's zoning board pursuant to La. R.S. 33:4721); *Pierce v. Par. of Jefferson,* 668 So. 2d 1153, 1154 (La. App. 5th Cir. 1996) (noting Parish's powers to impose and enforce zoning restrictions granted by, *inter alia,* La. R.S. 33:4721); *Barreca v. Par. of Jefferson,* 655 So. 2d 403, 404 (La. App. 5th Cir. 1995) (creation of Parish's Zoning Appeals Board authorized by La. R.S. 33:4727); *Bayou Self Rd. Dev. v. Jefferson Par. Council,* 567 So. 2d 679, 680 (La. App. 5th Cir. 1990) ("LSA–R.S. 33:4721 *et seq*. authorizes the Jefferson Parish Council to enact and amend zoning regulations as part of its police powers."); *Venture v. Par. of Jefferson,* CIV. A. 96-4070, 1997 WL 433493, at *4 (E.D. La. July 31, 1997) (noting applicability of La. R.S. 33:4721 *et seq*. to Parish zoning decisions).

And finally, a decision from *this* Court rightly grounded the authority of St. John the Baptist Parish to amend, supplement, change, modify, or repeal existing

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ordinances in, *inter alia,* La. R.S. 33:4725. *Save Our Neighborhoods v. St. John the Baptist Par.,* 592 So. 2d 908, 910, 914 (La. App. 5th Cir. 1991), *writ denied,* 594 So. 2d 892 (La. 1992).

Thus, state law applies to the St. John the Baptist Parish zoning authority, and, as discussed below, it requires Planning Commission review and public notice and comment before any zoning changes can be made.

B. The Parish's Last-Minute Amendment Violated State Law.

La. R.S. 33:4721 *et seq.* sets out the procedures required for enactment of zoning regulations and changes thereto by local governments. La. R.S. 33:4726(A) requires the involvement of planning commissions in the process and prohibits a local legislative body from "hold[ing] public hearings or tak[ing] action" on "any supplements, changes, or modifications" to "boundaries of various original districts as well as the restrictions and regulations to be enforce therein" until it has "received a final report of the zoning commission." [14] Before the planning commission can recommend such changes to the Parish Council, it must also hold a public hearing, with notice of the time and place of the hearing published at least three times in an official journal with at least ten days elapsing before the first publication and the date of the hearing. *Id.*

[14] For ease of reference and clarity, Plaintiffs repeat here the full text of La. R.S. 33:4726(A):

> In order to avail itself of the powers conferred by R.S. 33:4721 through 4729, the legislative body of the municipality shall appoint a zoning commission whose function it shall be to recommend the ***boundaries of the various original districts as well as the restrictions and regulations to be enforced therein***, and any ***supplements, changes, or modifications*** thereof. Before making any recommendation to the legislative body of the municipality, the zoning commission shall hold a public hearing. Notice of the time and place of the hearing shall be published at least three times in the official journal of the municipality, or if there be none, in a paper of general circulation therein, and at least ten days shall elapse between the first publication and date of the hearing. After the hearing has been held by the zoning commission, it shall make a report of its findings and recommendations to the legislative body of the municipality. ***The legislative body shall not hold its public hearings or take action until it has received the final report of the zoning commission***. (emphasis added).

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The Parish Council's adoption of Ordinance 90-27 directly violated these provisions when the reduced 300-foot I-1 buffer zone was inserted at the last minute and incorporated into the ordinance, circumventing the involvement of the Planning Commission in the process of altering or amending zoning restrictions, and without the required public notice and hearings. Greenfield acknowledges that state law would nullify Ordinance 90-27 because of these failures, which is why it wants this Court to ignore state law,[15] and instead focus on its attempts to create a conflict, where none actually exists, between the Home Rule Charter and the Code of Ordinances

As the District Court noted in its ruling, the Fourth Circuit Court of Appeal has reviewed the purpose and intent of Louisiana's constitutional and statutory requirements for zoning, to provide guidance to the lower court for its assessment as to whether an amendment to an ordinance must be submitted to the planning commission. ROA at 1397. In *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans,* the Fourth Circuit reviewed state law as well as local law, and emphasized the mandatory nature of the requirement of planning commission involvement in all zoning amendments and alterations, noting that the drafters "intended for ***all zoning amendments*** to be adopted in conformity with ***orderly procedural restrictions providing uncontestably for review and comment from a planning commission***." 195 So. 3d 606, 620 (La. App. 4th Cir. 2016) (emphasis added). In *Fauberg*, the Fourth Circuit was commenting on an amendment introduced by the mayor of New Orleans through the City Council late in the process of developing a comprehensive zoning ordinance. The amendment would have affected building requirements for only one neighborhood. Significantly, the

[15] Greenfield Br. at 22 noting that the actions of the New Orleans City Council were "subject to the limitations of Title 33 of the Revised Statutes," which it argues "do not apply to St. John the Baptist Parish."

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City Council issued public notice of the proposed ordinance with the amendment in question included and held a hearing on it two months later. The Fourth Circuit opined that this would not satisfy the requirements of La. R.S. 33:4725-26 because it omitted the referral to, and review and assessment by, the planning commission.

Here, the Parish's process ran even more afoul of the requirements of La. R.S. 33:4726(A). In *Fauberg*, the City Council at least issued notice of the amendment and held a hearing two months later, though it left the planning commission out of the process. In this matter, the amendment was introduced at the last minute, also without referral to the planning commission, and without any public notice and hearing, and quickly adopted into and with Ordinance 90-27 over a span of a few minutes. Standing alone, that failure to properly enact the zoning amendment is enough to invalidate the Ordinance; but it is also the case that it dramatically reduced a buffer, by half, that provided more protection to residents from the harmful effects of heavy industry.

Greenfield attempts to rely on the First Circuit's decision in *Residents of Highland Park, LLC v. Parish of East Baton Rouge,* 2008-2542 (La. App. 1 Cir. 7/22/09), 2009 WL 2183146, in support of its argument but this also fails, as the First Circuit agreed that amendments which affect zoning reclassifications already considered by a planning commission must themselves be submitted for review by the commission. In *Residents of Highland Park,* the amendment at issue did not pertain to zoning classifications – it "merely added the condition that certain deed restrictions be filed." *Id*. at *9. Because the "revised amendment did not affect the zoning reclassification issue already considered by the planning Commission, i.e. the requested zoning classification from A-1 to LC-1," the court did "not believe it was of such magnitude that a resubmission to the Planning Commission was required" under the Parish's rules. *Id*. at *9. The First Circuit distinguished the situation in *Highland Road* from the situation addressed by the Second Circuit in

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Cush v. Bossier City, 149 So.2d 196 (La.App.2d Cir.), *writ denied,* 244 La. 149, 150 So.2d 769 (1963), where that court held that the council's failure to submit an amended ordinance to the planning commission rendered the ordinance null and void. In contrast to deed restriction at issue in *Highland Road*, the First Circuit noted that the amendment made in Bossier City "completely changed the proposed zoning classification of the subject property from B-2 (Neighborhood Business District) to B-1." *Id*. at n. 10.

This is exactly the distinction the District Court noted in its ruling below: in *Residents of Highland Road*, "the amendment did not change a zoning classification at all. It only required that certain deed restrictions be filed" whereas, here, "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." ROA at 1399-1400.

C. The District Court's Ruling that the Last-Minute Amendment Violated Parish Law Was Correct and Should Be Affirmed.

In its ruling on Greenfield's Motion for New Trial, the District Court held that "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." ROA at 1555. Thus, the District Court rejected outright Greenfield's central argument that the Parish's zoning ordinance conflicted with its Home Rule Charter. The District Court was correct in doing so, particularly in light of the rules of statutory interpretation.

Art. IV(B)(3)(d) of the Home Rule Charter provides that when the Parish Council is considering an ordinance, "[a]fter all persons have been given the opportunity to be heard, the council may pass the ordinance with or without amendments." This provision says nothing about how the amendments are to be made and or what process must be followed. As the District Court pointed out, the

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Code of Ordinance provision governing zoning changes "merely supplements the provisions of the Parish Home Rule Charter providing additional requirements for a valid ordinance" whereas the "Home Rule Charter only allows that an ordinance may be passed with or without amendment and says nothing about the effectiveness of the amendment." ROA at 1555.

The analysis can end there, and the District Court's ruling could, and should, be affirmed; but the ruling is further supported, indeed required, by other provisions in the Home Rule Charter incorporating state law governing planning commissions and zoning. The Louisiana Supreme Court has emphasized that:

> A statute's meaning and intent is determined after consideration of the ***entire statute and all other statutes*** on the same subject matter, and a construction should be placed on the provision in question which is consistent with the express terms of the statute and with the obvious intent of the Legislature in its enactment of the statute. Where it is possible, the courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions.

ABL Mgmt., Inc. v. Bd. of Sup'rs of S. Univ., 2000-0798 (La. 11/28/00), 773 So. 2d 131, 135 (emphasis added). *See also*, *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans,* 2015-1308 (La. App. 4 Cir. 5/25/16), 195 So. 3d 606, 623 ("It is a hornbook rule of statutory construction that laws on the same subject matter must be interpreted in reference to each other" and "where two statutes deal with the same subject matter, they should be harmonized if possible, but if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.").

Here, it is crucial to note – and Greenfield neglects to mention – that another part of the Home Rule Charter explicitly incorporated state law governing planning commissions in the event a zoning ordinance was enacted. Art. III(C)(4)(b) of the Parish Charter provides:

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> If a zoning ordinance is enacted, the planning commission shall constitute the zoning commission for the Parish of St. John the Baptist, and shall exercise all the ***powers, duties and functions which are conferred or imposed on parish zoning commissions by the general laws of the state or by special laws applicable to St. John the Baptist Parish.***

(emphasis added).

As discussed above, state law requires planning commission review of any zoning changes, and public notice and comment prior thereto. Thus, the Charter provision governing enactment of ordinances – Art. IV(B)(3)(d) – must be read in conjunction with the Charter's provision concerning the planning commission and the requirement of compliance with state law, including e.g. La. R.S. 33:4726(A), with any later enacted zoning ordinance. These provisions at Art. III and Art. IV of the Charter are of "equal dignity." When read together as these two provisions must be, the District Court's ruling that the Code of Ordinance "merely supplements" the Charter is even clearer.

The parallel provisions of the Parish's Code of Ordinances requiring planning commission review, public notice and comment, for zoning amendments and alterations merely reiterate the requirements that already existed in state law, which have long applied to St. John the Baptist Parish, and that were explicitly incorporated by reference in the Charter. *Compare* St. John the Baptist Parish Code of Ordinances, Sections. 113-76 through 113-78, and La. R.S. 33:4726(A). The Charter also acknowledges the supremacy of the Louisiana Constitution and parameters of its own authority with respect to state law in Art. II of the Charter, which provides:

> Except as otherwise provided by this Charter, St. John the Baptist Parish shall continue to have all powers, functions, rights, privileges, immunities, and authority previously possessed under the laws of the state. The parish shall have and exercise such other powers, rights, privileges, immunities, authority and functions ***not inconsistent with this Charter as may be conferred on or granted to a local governmental subdivision by the State Constitution and laws***

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> ***of the state.*** The parish is hereby granted the right and authority to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, ***not denied by this Charter or general law, or inconsistent with the Constitution.*** The parish shall have the right and authority to exercise general police power. (emphasis added)

Additionally, Art. III(A)(7)(b) of the Home Rule Charter provides that the 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." As set out above, Louisiana's law governing zoning denies local governments the authority to enact ordinances that contravene the clear procedures set out therein. *State ex rel. Fitzmaurice v. Clay,* 208 La. 443, 454, 23 So. 2d 177, 181 (1945) ("the police power with reference to zoning *must be exercised* pursuant to the terms of [Louisiana's zoning enabling statute]").[16] (emphasis added). This is intended to ensure that local government zoning decisions comply with the Louisiana Constitution and that "unbridled power – a 'blank check' – not be granted to local government units, but rather that there should be uniform procedures for the exercise of these powers." *Am. Waste and Pollution Control Co.,* 609 So. 2d at 203. Those uniform procedures require, *inter alia,* planning commission involvement and review of all amendments or alterations to zoning, with public notice and a hearing. La. R.S. 33:4726.

Greenfield acknowledges that there is an additional limitation built into the Home Rule Charter on the Parish Council's authority to amend even general ordinances. Art. IV(B)(3)(g) provides that even a general, non-zoning ordinance will not be valid if it is altered or amended in a way that "nullif[ies] its original

[16] La. R.S. 33:4721 *et seq* was originally passed in 1926 by the Louisiana Legislature as Act 240, and is known as Louisiana's zoning enabling act.

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purpose or to accomplish an object not consistent with its original purpose." The Code of Ordinance provision requiring that all zoning amendments be first submitted for Planning Commission review and subjected to public notice and comment is a recognition that zoning changes can have far-reaching impacts which can inherently alter a previously reviewed ordinance in ways that nullify its original purpose. The ordinance at issue here is a good example: the amendment altered, in reducing by half, a pre-existing 600-foot buffer intended to afford neighboring residents more protection against the effects of heavy industry.

When all relevant provisions of the Home Rule Charter are read together, with the Code of Ordinances, as they must be, there is no question that Ordinance 90-27 was null and void *ab initio*.

D. Greenfield's Own Cases Demonstrate that the Ordinance Was Null and Void *Ab Initio* and Cannot Be Saved by Art. IV(B)(3)(g) of the Charter.

Greenfield offers a final, alternative argument which is self-contradictory and rooted in an erroneous rewriting of the factual record. Greenfield suggests that if the Charter and Code of Ordinances 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 *Fauberg* and *Residents of Highland Road.*"[17] This argument does not work: if the Charter and Code of Ordinances are in harmony as the District Court found – which they are – then the Ordinance was passed in violation of both and is null and void *ab initio*, full stop. The Charter's provision allowing for amendments to ordinances that do not change their substance pertains to amendments that have been properly and validly enacted. Art. IV(B)(3)(g) of the

[17] Greenfield Br. at 25-27.

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Charter cannot be used to rehabilitate ordinances that unlawfully changed zoning classifications.

Greenfield attempts to invoke *Fauberg* and *Residents of Highland Road* to support its argument but, again, both cases actually demonstrate the opposite. Both the First Circuit in *Highland Road* and the Fourth Circuit in *Fauberg* recognized that late-added amendments which change zoning classifications previously considered by planning commissions must be subjected anew to planning commission review, which also necessitates public notice and comment. In *Fauberg,* the Fourth Circuited noted that "[t]he city ***was obligated by statute and ordinance*** to ***first*** refer [the amendment] 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." 195 So.3d at 621 (bold emphasis added). In *Residents of Highland Road,* the First Circuit held that 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." 2009 WL 2183146 at *9. Otherwise, had the amendment affected the zoning reclassification previously considered by the planning commission, a resubmission to the planning commission would have been required. *Id.* Further, as noted above, the Second Circuit agrees and has held an amendment similar to the one at issue here null and void for failure to submit it to review by the planning commission. *See Cush v. Bossier City,* 149 So. 2d 196, 197-98 (La. Ct. App. 1963) ("There is no conflict in our jurisprudence as to the established principle that the zoning power must be exercised pursuant to the terms of the statute governing the same.").

Thus, Greenfield's argument is also wrong because it did in fact change the *substance* of the Ordinance. As the District Court noted, "the amendment to

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Ordinance 90-27 rezoned land that would have been zoned I-3 under Ordinance 90-27's original version as I-1." ROA at 1400. That is to say, the amendment changed the zoning of land. The last-minute amendment here was arguably far more significant in impact than in *Cush*, which changed the zoning classification from B-2 to B-1, given that it cut in half a buffer zone intended for the protection of parish residents.

Greenfield's belated argument that the Planning Commission actually did consider the amendment is impossible – the amendment was not even introduced until the last minute and well *after* the Planning Commission hearing. The Planning Commission could not have possibly considered at its hearing an amendment that did not exist yet – particularly when the amendment served to reduce the pre-existing protections for neighboring residents.

CONCLUSION

Plaintiffs respectfully request this Court affirm the District Court's ruling.

December 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

In compliance with Rule 2.8 of the Uniform Rules of Courts of Appeal and La. Code of Civ. Proc. Art. 1313, I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail.

New Orleans, Louisiana, this 2nd day of December, 2024.

/Pamela C. Spees
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