

THE DESCENDANTS PROJECT, ET AL

NO. 24-CA-493

VERSUS

FIFTH CIRCUIT

ST. JOHN THE BAPTIST PARISH, ET AL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 77,305, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

April 02, 2025

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and John J. Molaison, Jr.

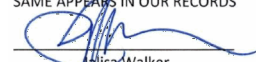
MOTION TO DISMISS APPEAL DENIED; JUDGMENTS AFFIRMED

SMC

MEJ

JJM

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


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CHEHARDY, C.J.

Greenfield Louisiana, LLC, as intervenor in this zoning dispute, appeals the trial court's ruling granting summary judgment in favor of plaintiffs, the Descendants Project, Jocyntia Banner, and Joyceia Banner, and denying Greenfield's motion for summary judgment and motion for new trial. On appeal, plaintiffs moved to dismiss the appeal, arguing that the matter is moot due to St. John the Baptist Parish Council's enactment of a new ordinance that addresses the subject of this appeal. For the reasons that follow, we deny plaintiffs' motion to dismiss the appeal and affirm the trial court's judgments.

Background

Plaintiffs filed suit in 2021 seeking a writ of mandamus directing the Parish of St. John the Baptist to remove the industrial zoning designation for portions of the former Whitney Plantation property and surrounding areas along the Mississippi River. The property, an approximately 1362-acre tract in Wallace, was purchased by Formosa Chemical Corporation in April 1990 for the purpose of developing a rayon pulp facility.

Around the time that the sale to Formosa was completed, the St. John the Baptist Parish Council considered an ordinance that proposed rezoning most of the property, which was formerly residential or farmland, to I-3, an industrial zoning designation that permits various industrial uses, including grain elevators.¹ Other

¹ In pertinent part, Ordinance 90-27 states:

THE ST. JOHN THE BAPTIST PARISH COUNCIL HEREBY ORDAINS:

An ordinance allowing for the following zoning changes on properties of the Whitney Plantation and adjacent properties, Edgard, LA, St. John the Baptist Parish:

- (1) Property proposed to be rezoned from B-1 to B-2
- (2) Property proposed to be rezoned from C-1 and R-1 to I-3
- (3) & (4) Property proposed to be rezoned from R-1 to I-3
- (5) Property proposed to be rezoned from C-1 to I-1
- (6) Property proposed to be rezoned from R-1 to I-1

tracts within the property would be rezoned to I-1 or B-2.² Before its passage, the proposed ordinance was submitted to the Planning and Zoning Commission. The Commission held two public hearings and heard extensive commentary both for and against the rezoning. The Commission unanimously recommended rezoning for industrial use, and the matter was then referred to the Parish Council.

On April 19, 1990, the Council considered the proposed ordinance in a public hearing. According to the Official Proceedings of the St. John the Baptist Parish Council, “Legal Counsel Tom Daley reviewed the proposed zoning changes and recommended an amendment to Ordinance 90-27 as it pertains to the wetlands.” The amendment to Ordinance 90-27, as adopted, provides: “[W]here ever an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1.”

After the Parish Council approved the motion to amend the zoning map attached to Ordinance 90-27, the Council considered and adopted the proposed ordinance, as amended, with eight votes in favor and one councilperson recused. Ordinance 90-27 became effective on May 1, 1990. Although Formosa’s planned

Amendment: proposed zoning map submitted under Ordinance 90-27 to reflect the following: where ever an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from the R-1

² The St. John the Baptist Parish Code of Ordinances defines the following zoning districts:

- R-1, or Residential, is for “low-density single-family residences and accessory uses.”
- C-1, or Commercial, is to “dispense commodities, provide professional services or provide personal services.”
- I-1, or Industrial, is for “light manufacturing, processing, storage and warehousing, wholesaling and distribution.”
- I-3, or Heavy Industrial, is for “heavy industry with intense uses, while at the same time making the areas compatible with adjacent nonindustrial areas and uses.”
- B-1 is a Batture District designation for barge mooring (if no obnoxious odors exist) and activities not related to other manufacturing or industrial activity.
- B-2 is a Batture District designation for commercial and/or industrial port facilities, and other river related industrial activities.

See St. John the Baptist Parish Code of Ordinances, §§ 113-179; 113-304; 113-364; 113-404; 113-426; 113-433.

industrial use for the property never reached fruition, the industrial zoning designation implemented in 1990 was never changed. In 2021, Greenfield Louisiana, LLC, purchased the property with the intent to develop a \$400 million grain elevator and terminal.³

Plaintiffs filed a petition for writ of mandamus seeking to have Ordinance 90-27 declared void *ab initio*. First, they argued that then parish president Lester J. Millet, Jr., had engaged in corrupt and illegal actions at the time the ordinance was enacted, pointing to his convictions in federal court. *See U.S. v. Millet*, 123 F.3d 268 (5th Cir. 1997).⁴ Plaintiffs also argued that the ordinance was never authenticated, as required by Article 4, Section F of the Parish’s Home Rule Charter. They further contended that a survey/zoning map previously attached to the ordinance, which delineated the properties to be rezoned, was torn away from documents filed in the court records. Finally, plaintiffs argued that the ordinance did not comply with the Parish’s land-development regulations, because the Council amended the proposed ordinance without first having the amended version reviewed by the Zoning Commission.

Greenfield intervened in the action. The matter was converted from a mandamus to an ordinary proceeding, and in early 2022, plaintiffs filed amending petitions. In 2023, Greenfield and the Parish filed virtually identical motions for summary judgment seeking to dismiss plaintiffs’ claims. Plaintiffs opposed those motions and filed a counter motion for summary judgment, requesting nullification of Ordinance 90-27 for the reasons expressed in its petitions – corruption and

³ The April 9, 2024 Minutes for the “Official Proceedings” of the St. John the Baptist Parish Council, which were attached to plaintiffs’ motion to dismiss this appeal, indicate that Greenfield now leases the property from the Port of South Louisiana.

⁴ The U.S. Fifth Circuit Court of Appeals opinion states that between January 1988 and October 1992, Millet extracted \$200,000 of the \$479,000 real estate commission earned by Durel Matherne in the sale of the Whitney Plantation to Formosa Chemical Corporation. The Fifth Circuit affirmed the jury’s convictions of Millet for money laundering and violations of the Hobbs Act and the Travel Act, 18 U.S.C. §§ 2, 1951, 1952, and 1956. Millet was sentenced to 57 months in prison, fined \$200,000, and ordered to forfeit \$200,000.

improper procedure. Plaintiffs further claimed that the Council's amendment inserting the 300-foot I-1 buffer actually amended Ordinance 88-68, which, they contend, required a 600-foot buffer between I-3 and residential zones on the Parish's official zoning map. Plaintiffs stated that the same councilmembers who passed Ordinance 88-68 also voted on Ordinance 90-27. Plaintiffs argued the amendment to 90-27 made plaintiffs worse off than they would have been without the amendment, and although the Council could have opted to amend or reduce the 600-foot buffer required by Ordinance 88-68 when it passed 90-27, the Parish Council could do so only in accordance with its own laws governing zoning changes, which it did not do here.

In support of its motion and in opposition to plaintiffs' motion, Greenfield argued first that the actions for which then-parish-president Millet were convicted—accepting a portion of the commission for the sale of the property at issue—had nothing to do with the rezoning of the property. Moreover, Greenfield argued that plaintiffs offered only conclusory allegations, but no evidence, in attempting to prove that Millet had influenced the zoning amendments in this case. Second, Greenfield pointed out that authentication of an ordinance is not the same as the enactment of an ordinance. Greenfield also contended that the procedural requirements for passing Ordinance 90-27 were met. Alternatively, Greenfield argued that the amendment did not change the substance of the proposed ordinance already considered by the Commission, thus, the amendment did not need to be re-submitted to the Commission for further review.

Additionally, Greenfield disputed plaintiffs' contention that Ordinance 88-68 definitively established a 600-foot buffer. Greenfield further argued that the amendment adding the I-1 buffer retained the original purpose of Ordinance 90-27, because it provided more protection to neighboring residential districts than the

Parish's code otherwise would have required in an I-3 zone. According to Greenfield, by creating an I-1 buffer *within* the I-3 zone, no additional land uses were permitted, because the Parish's zoning scheme for industrial uses is cumulative, with I-3 uses encompassing I-1 uses. Greenfield argues that if the Commission had considered the amendment to 90-27, it would have been considering the same criteria it already addressed when, before the proposed amendment, the Commission recommended the area be rezoned as I-3. As such, Greenfield contends that plaintiffs were not prejudiced in any way when the amendment to include the 300-foot I-1 buffer zone was added to Ordinance 90-27.

After a hearing on the parties' summary judgment motions, the trial court granted plaintiffs' motion and declared Ordinance 90-27 void *ab initio*, because the Council had failed to submit the Ordinance's proposed amendment to the Planning Commission for review and recommendation. The trial court also denied Greenfield's and the Parish's motions for summary judgment.

In Reasons for Judgment, the trial court succinctly outlined the relevant provisions of the Parish's zoning ordinances. The court noted that immediately before the Council voted on the Ordinance 90-27, Councilman Lewis introduced an amendment to "place a 300-foot I-1 buffer wherever an I-3 district abuts and [sic] R-1." This amendment had not been submitted to the Planning Commission, as required by the parish ordinances. Thus, the trial court reasoned, the ordinance was passed in violation of the zoning ordinances requiring that amendments shall be reviewed by the Commission.

Greenfield filed a motion for new trial, which the trial court denied. Greenfield now appeals the trial court's summary judgment rulings and the denial of its motion for new trial. Plaintiffs filed a motion to dismiss the appeal, arguing that the subject of the appeal is moot in light of the Parish Council's recent

enactment of Ordinance 24-18, which re-establishes the property's zoning designation as primarily industrial.

Motion to Dismiss Appeal

Plaintiffs argue that Greenfield's appeal should be dismissed, because after the trial court's August 4, 2023 judgment ruled that Ordinance 90-27 was void *ab initio*, the St. John the Baptist Parish Council passed Ordinance 24-18, which rezones the property as industrial. Plaintiffs contend the passage of this new ordinance renders the present appeal moot, as there is no longer a justiciable controversy. For this Court to have jurisdiction, there must be a "justiciable controversy," which requires "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *St. Charles Par. Sch. Bd. v. GAF Corp.*, 512 So.2d 1165, 1171-72 (La. 1987) (*on reh'g*). Plaintiffs contend that any decree as to the trial court's ruling declaring the earlier ordinance void *ab initio* could give "no practical relief" and thus there is no justiciable controversy, citing *Cobb v. Kleinpeter*, 95-271 (La. App. 3 Cir. 10/4/95), 663 So.2d 236, 240, *writ denied*, 95-2683 (La. 1/12/96), 666 So.2d 323. Plaintiffs agree that they have filed suit to challenge Ordinance 24-18, but they contend there is no authority to suggest that the speculative outcome of related litigation is sufficient to revive a moot issue.

In opposition to the motion to dismiss the appeal, Greenfield argues the issue is not moot because, as plaintiffs concede, they challenged the viability of the new ordinance in case No. 80394.⁵ According to Greenfield, if Ordinance 24-18 also were to be declared void *ab initio*, this Court's decision to dismiss the present

⁵ A copy of the third amended petition in case No. 80394 is attached to Greenfield's opposition to the motion to dismiss filed in this Court.

appeal forecloses Greenfield from exercising its right to appeal the trial court's rulings related to Ordinance 90-27.

We agree with Greenfield on this point and decline to dismiss the appeal. In *Cat's Meow, Inc. v. City of New Orleans through Dep't of Finance*, 98-601 (La. 10/20/98), 720 So.2d 1186, 1193, the Supreme Court stated: "When the challenged article, statute, or ordinance has been amended or expired, mootness *may* result if the change corrects or cures the condition complained of or fully satisfies the claim." (Emphasis added). The Court in *Cat's Meow* did not hold that a change or amendment always results in a finding of mootness. Indeed, the Alabama Supreme Court has refused to dismiss an appeal as moot in cases with strikingly similar fact patterns. *See, e.g., Ex Parte Buck v. C.H. Highland, LLC*, 256 So.3d 84 (Ala. 2017) ("Because there remains the possibility that the new ordinance could be held invalid, a holding that this appeal is moot based on the adoption of the new ordinance is premature."); *Clay County Comm'n v. Clay County Animal Shelter, Inc.*, 283 So.3d 1218 (Ala. 2019) (same). We find the *Buck* and *Clay County* cases persuasive. Accordingly, plaintiffs' request to dismiss the appeal as moot is denied.

Motions for Summary Judgment

We next address the merits of plaintiffs' and Greenfield's motions for summary judgment. We review the grant or denial of a motion for summary judgment *de novo*. *Advanced Benefit Concepts, Inc. v. Blue Cross & Blue Shield of Alabama*, 23-1291 (La. 9/6/24), 392 So. 3d 308, 316. As seen above, the primary issues on appeal are whether the Parish's Home Rule Charter and the Parish's zoning ordinances may be harmonized, and whether the trial court erred when it declared Ordinance 90-27 void *ab initio* because the Council did not give the Commission an opportunity to first review the proposed amendment to Ordinance 90-27.

St. John the Baptist Parish is governed by a Home Rule Charter, which establishes general requirements for the passage of ordinances. For instance, after an ordinance is introduced at a regular or special meeting, and unless it has been rejected at the same meeting by a majority of council members, “the council shall cause the ordinance, or a summary thereof to be published in the official journal at least once, together with a notice of the date, time and place, when and where it will be given a public hearing and be considered for final passage.” Home Rule Charter Art. IV, § B. After any interested persons have been given an opportunity to be heard at the advertised time and place, “the council may pass the ordinance with or without amendments.” Art. IV, § B(3)(d). Moreover, Article III(C)(4)(b) of states: “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.”

In addition to the Home Rule Charter, St. John the Baptist Parish’s Code of Ordinances contains specific zoning provisions that require public notice and public hearings to be held before the Zoning and Planning Commission and the Parish Council change zoning classifications. *See Save Our Neighborhoods v. St. John the Baptist Parish*, 592 So.2d 908, 910 (La. 1991). Pursuant to the Parish’s Code of Ordinances § 113-76, the official zoning map may be amended by the Parish Council on its own motion, or on recommendation of the Planning Commission, but no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the Planning Commission for review and recommendation. § 113-77 (b) states that no amendment [to the official zoning map] shall be made “unless it is determined by the planning commission that the amendment or supplement, or change to the regulations, restrictions or

boundaries should be made[.]” Furthermore, § 113-78 (7) states “a report of the planning commission’s recommendation and the zoning regulatory administrator or his designee[’s] recommendation *shall* be submitted to the parish council.” (Emphasis added). § 113-78 (8) states that the Council “shall not take official action until the report of the planning commission is received.”

Greenfield contends that because Art. IV, § B(3)(d) of the Home Rule Charter permits the council to pass an ordinance “with or without amendments,” the Code of Ordinances § 113-76 *et seq.* requirements to submit all amendments to the Planning Commission have no effect. Greenfield claims the Home Rule Charter, which is tantamount to the constitution of the Parish, supersedes any contrary or conflicting provision in the Code of Ordinances, and that the trial court erred in “treating a provision of the Code of Ordinances with equal dignity to a contrary provision” of the Parish’s Home Rule Charter. Greenfield therefore argues that by putting the Code of Ordinances and the Home Rule Charter on equal footing, and finding no conflict among their provisions, the trial court erred when it (i) granted summary judgment in favor of plaintiffs; (ii) denied its own motion for summary judgment; and (iii) denied Greenfield’s motion for new trial. Greenfield also suggests that the Commission, in effect, already considered the amendment, so referring the amendment back to the Commission was unnecessary.

We reject Greenfield’s argument that Code of Ordinances § 113-76 *et seq.* cannot be harmonized with the provisions of the Home Rule Charter. Furthermore, we agree with the trial court’s statement in its August 4, 2023 Reasons for Judgment:

Section B(3)(d) must be considered in conjunction with the zoning-specific condition that “*no amendment [to the official zoning map] shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation.*” § 113-76 (emphasis added). Accordingly, while the parish council may amend a proposed ordinance prior to enactment so long as the

amendment does not “nullify its original purpose or ... accomplish an object not consistent with its original purpose,” if the amendment makes a change to the official zoning map and it was not considered by the planning commission, the amendment is without effect. Art. IV, § B(3)(g); § 113-76. Any interpretation to the contrary would circumvent the clear requirement that the planning commission review all proposals concerning zoning and submit its report to the parish council.

Thus, the trial court reasoned, where Ordinance 90-27’s amendment was not first submitted to the Planning Commission, that Ordinance has no effect and is considered void *ab initio*.

In *ABL Mgmt., Inc. v. Board of Sup’rs of S. Univ.*, 00-798 (La. 11/28/00), 773 So.2d 131, 135, the Louisiana Supreme Court stated:

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 with other provisions.

See also Faubourg Marigny Imp. Ass’n, Inc. v. City of New Orleans, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 623 (holding that 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).

Moreover, “while the validity of an ordinance adopted by a legislative body is presumed, zoning laws are in derogation of the rights of private ownership.” *Id.* at 620. Thus, courts consistently require strict compliance with the statutory procedures regulating enactment of zoning laws. *Id.* Failure to comply with such procedural restrictions, accordingly, is fatal to the validity of the zoning ordinance. *Id.*

Accepting Greenfield’s contention that the amendment to 90-27 did not need to be reviewed by the Commission effectively renders the Parish’s zoning

ordinances meaningless, a result contrary to *ABL Mgmt.* and *Faubourg Marigny*, *supra*. Again, although Home Rule Charter Art. IV, § B(3)(d) states that “the council may pass the ordinance with or without amendments,” we find Ordinances § 113-76 *et seq.* do not conflict with that provision, and that these zoning amendment requirements mandate strict compliance. *See Faubourg Marigny*, *supra*. Because the eleventh-hour amendment to 90-27 enumerated a buffer zone decidedly different from that which would have existed without the amendment, we also reject the notion that the proposed amendment was already considered by the Commission.

Where the Council adopted Ordinance 90-27, as amended, without referring the amendment to the Commission for consideration, in derogation of Code of Ordinances § 113-76 *et seq.*, we find no error in the trial court’s rulings on the parties’ respective motions for summary judgment.

Motion for New Trial

In a third assignment of error, Greenfield contends the trial court erred in refusing to grant its motion for new trial. A trial court has great discretion in determining whether to grant or deny a motion for new trial. *See Davis v. Wal-Mart Stores, Inc.*, 00-445 (La. 11/28/00), 774 So.2d 84, 93. Because we have determined that the trial court’s rulings on the motions for summary judgment should be affirmed, we find no abuse of discretion in the court’s decision to deny Greenfield’s motion for new trial. This assignment of error lacks merit.

CONCLUSION

Plaintiffs’ motion to dismiss the appeal is denied. The trial court’s August 4, 2023 judgment granting summary judgment in favor of plaintiffs, the Descendants Project, Jocyntia Banner, and Joyceia Banner, and denying the motion for summary judgment filed by intervenor, Greenfield Louisiana, LLC, is affirmed.

The trial court's January 9, 2024 judgment denying Greenfield's motion for new trial is also affirmed.

MOTION TO DISMISS APPEAL DENIED;
JUDGMENTS AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
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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 **APRIL 2, 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-493

E-NOTIFIED

40TH DISTRICT COURT (CLERK)

HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)

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