

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

The Descendants Project, Jocyntia Banner, and Joyceia Banner

Plaintiffs

v.

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

Defendants

PETITION FOR A WRIT OF MANDAMUS

“NOW INTO COURT, through undersigned counsel, come petitioners, The DESCENDANTS PROJECT, Jo Banner, and Joy Banner, requesting this Court declare a rezoning ordinance to be an absolute nullity and order ST. JOHN THE BAPTIST PARISH to immediately remove the unlawful designation from all Parish zoning maps and documents (p. 1).”

INTRODUCTION

“The rezoning of the tract of land at issue here for heavy industrial use was done in 1990 as part of an illegal scheme that involved extortion, money-laundering, and threats of legal action against neighboring residents to discourage their resistance to selling their property, for which the former Parish President was convicted in 1996 by a federal jury and sentenced to nearly five years’ imprisonment. The corrupted deal fell apart two years after the rezoning ordinance was passed and the land has since been used for agricultural purposes, but the ordinance remained on the books. Now, a new heavy industrial facility is seeking to make use of the decades-old illegal rezoning, posing an imminent threat to the health, safety, general welfare, culture, property, and due process rights of the residents of Wallace, as well as to potential burial sites of people once enslaved there, two national historic landmarks, and even Lac des Allemands (p. 1).”

FACTS

- I. **Ordinance 90-27 Was the Product of an Illegal Extortion and Money-Laundering Scheme.**

“On April 25, 1996, a federal jury convicted Lester Millet Jr. of extortion, money laundering, and violation of the Travel Act for acts he committed while he was President of St. John the Baptist Parish in connection with the attempts by Formosa, a Taiwanese corporation, to locate a heavy industrial facility in Wallace (p. 4).”

“The facts cited by the Court of Appeal pertained to Millet’s efforts to assist Formosa in locating a rayon pulp facility on the large tract of land in Wallace at issue here (hereinafter ‘the Wallace tract’) and profit off of the siting of the facility through a backroom deal with a friend, and further abusing his authority as Parish President ‘to push through the needed rezoning’ and issue ‘threats’ of legal action against neighboring property owners to get them to convey their land to Formosa (p. 4).”

“On April 19, 1990, the same month that Formosa completed the purchase of the land, Millet made good on his promise to ‘push through the needed rezoning’ when the St. John the Baptist Parish Council voted to rezone the Wallace tract, which included the Whitney Plantation and adjacent properties, when it passed Ordinance 90-27. A large portion of the property was designated for heavy industrial use, or I-3 zoning, but Ordinance 90-27 also contained an amendment to the proposed zoning map for the property which required that ‘where ever [sic] 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’ (p. 5).”

“The insertion of the 300-foot buffer requirement was a dramatic departure from a much larger distance requirement that was supposed to apply to I-3/heavy industrial zones – 2,000 feet from residential dwellings with a density of 1 dwelling per acre gross area. The minimal 300-foot buffer put forth in Ordinance 90-27 is, thus, further evidence that the rezoning of this tract for heavy industrial use was not appropriate for the area and that it was being corruptly ‘pushed through.’ (p. 5-6).”

“At the hearings in 1990, residents spoke out about their concerns about heavy industrial rezoning, the effect on their property and the possibility of having to relocate (p. 7).”

“One resident advised the Planning Commission that Formosa had not offered to relocate her and ‘the price offered for her land was too low’ and ‘[i]f her land is zoned industrial, she will lose her property.”

“Another resident told the Planning Commission, ‘My daughter is frightened because she does not know if we will have to move. I have no answers to give my child.’”

“Other residents living next to the Wallace tract still recall the trauma of being told they had to sell their property to make way for the Formosa facility and that they had only three months to find another place to live.”

“At the April 19, 1990, meeting of the Parish Council, the Council abruptly cut off the public hearing on the ordinance during the portion of the meeting when community members were expressing their opposition to the rezoning. Because of the upset reaction of those in attendance to the closing of the hearing, the Council took a short recess. When it returned, it voted to pass Ordinance 90-27. Id. (p. 6).”

“Ultimately, the Formosa deal fell through but not before the company bought up dozens of properties from neighboring landowners through its subsidiary called the ‘Format Corporation,’ which in turn sold the properties to Formosa as a fully-assembled tract for \$10 million (p. 8).”

II. Conflicting Zoning Maps Raise Further Questions About the Zoning Process and Status of the Wallace Tract.

“Currently, St. John the Baptist Parish has at least four zoning maps that have been held out to the general public as official even though they contain conflicting zoning designations for the Wallace Tract and violate the Parish’s own zoning ordinances. The fact that these maps conflict with each other when it comes to the zoning designations for the Wallace Tract casts further doubt as to the integrity of the zoning process in general and the status of this tract in particular (p. 9).”

A. Map 1 – The 2012 Signed, Physical Map in the Parish Office

“In 2012, it was discovered that the official parish zoning map signed by the former parish president could not be located. To replace the lost map, on February 14, 2012, the Parish Council passed a resolution adopting a ‘new official zoning map.’ Sec. 113-143(b)(3) of the Parish Code of Ordinances provides that when ‘the official zoning map, or any portion thereof, becomes damaged, lost, destroyed or difficult to interpret by reason of the nature or number of changes, the parish council may, by resolution, adopt a new official zoning map which may correct drafting errors or omission, **but shall not amend the original official zoning map.**’ Nevertheless, in 2012, when the Parish Council was considering the resolution to adopt the new official zoning map, council members made clear that ‘significant changes to the zoning map’ ‘had to be made.’ (p. 10).”

“The Parish’s Home Rule Charter requires that any act that ‘[a]dopts or modifies the official map, plot, subdivision ordinance, regulations, or zoning 11 plan’ be done by ordinance, which must be enacted pursuant to the procedures for public notice and hearings set out in Art. IV(B) of the Charter. The 2012 map modified and / or amended the official map and should have been adopted by ordinance, not resolution. Nevertheless, this ‘official zoning map’ adopted on February 14, 2012, by Resolution 12-07, is now on file in the Parish office (p. 10-11).”

“According to this map, the Wallace tract, which is situated between the Whitney Plantation and Slavery Museum, and the former Evergreen Plantation, both containing National Historic

Landmarks, on the east side, and the neighborhoods, churches, and small businesses that make up the town of Wallace on the west side, is zoned for heavy industrial use, or I-3. If Ordinance 90-27 were a legal, valid ordinance, which it is not, and if this map is to be treated as the 'final authority as to the current zoning status of all lands and waters in the unincorporated areas of the parish,' then this zone would be illegal as it clearly and directly violates the ordinance's requirements of a 300-foot I-1 (light industrial) buffer between the I-3 (heavy industrial) zone and residential zones (p. 11-12)."

B. Map 2 – The GIS Map

"When this conflict was brought to the attention of the Parish's Director of Planning and Zoning, Rene Pastorek, Mr. Pastorek stated that an online mapping system utilized by the Parish contained what he claimed was the correct zoning designation for this tract of land.

"However, sec. 113-143(b)(2) of the Parish Code provides that "[r]egardless of the existence of purported copies of all or part of the official zoning map which may from time to time be made or published, [t]he official zoning map, which shall be located in the parish engineer's office, shall be the final authority as to the current zoning status of all lands and waters in the unincorporated areas of the parish."

"With regard to computerized reproductions, sec. 113-143(b) of the Parish Code provides that a 'computerized reproduction of the official zoning map in whole or part, shall constitute an official zoning map when printed as a [sic] original production, printout, or graphic illustration, and bearing the signature of the planning commission or its duly appointed director or representative.' Not only does the GIS map lack the required signatures, a disclaimer on the webpage used to access the GIS maps expressly states that the Parish '**makes no warranties, express or implied, regarding the completeness, reliability or suitability of the site data and assumes no liability associated with the use or misuse of said data**' (p. 13)."

"Unlike the 'new official zoning map' adopted in 2012 by the Parish Council in Resolution 12-07, the GIS map of Wallace accessed through this portal shows the I-3/heavy industrial zone in Wallace to be surrounded by an I-1/light industrial zone, as shown below. Unlike the map adopted by the Parish Council as the 'official zoning map,' the Parish's GIS Mapping System shows an I-1 / light industrial zone between the I-3/ heavy industrial and R-1/ residential zones. However, this map, as the Parish Assessor makes clear, is not the official zoning map and is not to be considered a legal document, and the accuracy of it is specifically disclaimed (p. 14)."

C. Map 3 – The Other Online "Official Zoning Map"

"Further confusing matters, a different map linked from another part of the Parish's website as the 'official zoning map,' **showed the entire Wallace Tract to be zoned as R1/residential**, not heavy or light industrial."

“Justin Kray, an urban planner and cartographer providing expert analysis to the Descendants Project, asked Mr. Pastorek about this map and its inconsistency with the GIS map in a phone call on October 18, 2021. The hyperlink to this ‘official zoning map’ was removed as of October 19, 2021 (p. 16).”

D. Map 4 – An Online “Parish Zoning Map” for “Residents”

“Another map linked from the St. John the Baptist Parish website shows the Wallace tract zoned as I-3, this time also without the I-1/light industrial zone. That link shows the Wallace trace with no I-1 buffer between it and any of the residential areas (p. 16).”

E. Comprehensive Planning Maps

“Other maps developed as part of the Parish’s comprehensive planning process add to the questions and concerns about the status and intended uses and zoning for this tract.”

“As shown in the Parish’s Comprehensive Land Use Plan (hereinafter “Comprehensive Plan”), the “Current Land Use” map depicted the Wallace Tract as used for agriculture. A “Future Land Use” report prepared in the early stages of the process of developing the Comprehensive Plan... included a map which showed the Wallace Tract would be zoned for ‘Fishing, Hunting, Forestry, and Agriculture.’ However, in the final Comprehensive Plan submitted to the Parish in 2014, the recommended Future Land Use map had changed with regard to the Wallace tract – it depicted the Wallace Tract zoned as industrial (p. 18).”

F. The Unsigned Copy of the Original 1986 Zoning Map

“In response to a records request for “copies of any and all zoning maps that existed prior to the official zoning map adopted pursuant to Resolution 12-07” on February 14, 2012, [t]he Parish’s custodian of records provided an unsigned copy of the official zoning map from 1986, which had been lost. The map shows that the entire Wallace tract was originally designated as R-1/residential, before controversial Ordinance 90-27 was passed, and long before the existence of the Parish’s various maps that show conflicting zoning designations (p. 19).”

III. Residents of Wallace, Neighboring Historic and Cultural Sites, and Lac des Allemands Face Potential Threat from a New Heavy Industrial Facility Seeking to Locate on the Wallace Tract.

A. Wallace

“Wallace is home to approximately 755 people who live within about six square miles. The overwhelming majority of the people living in Wallace – 89 percent – are African American. Wallace residents are facing an imminent threat to their health, safety, well-being, and property values because the tract, which has been used for farming sugarcane for years, is now being

targeted as a proposed site of a massive grain elevator. **Some residences would be less than 300 feet away from the proposed facility.** The grain elevator, proposed by Greenfield Louisiana, LLC, a company based in Denver, Colorado, would consist of 54 grain silos and a conveyor structure nearly as tall as the Statue of Liberty (p. 20).”

“The United States Occupational Safety and Health Administration (OSHA) has designated the grain handling industry as a ‘high hazard industry’ that can expose individuals to ‘numerous serious and life-threatening hazards.’ Such hazards include fires and explosions from grain dust accumulation and other serious workplace hazards. According to OSHA, such explosions are often severe, involving loss of life and substantial property damage. **One of the ‘worst industrial disasters in modern Louisiana history’ involved a grain elevator explosion in Westwego Louisiana in which thirty-six people died.** Grain dust has been shown to cause a host of respiratory problems and conditions like asthma. Grain dust can also be a vehicle for other toxics to get deep into the lungs and blood stream (pp. 20-21).”

B. National Historic Landmarks

“The Whitney Plantation is an important cultural and historical landmark for the local community of Wallace and people descended from those who were enslaved on that plantation. Prior to the COVID-19 pandemic, over 100,000 people visited the Whitney annually. Any heavy industrial facility located in the Wallace Tract would likely have adverse impacts on the National Historic Landmark. The facility currently proposed for the site has already been the subject of concern by federal and state historic preservation authorities (pp. 22-23).”

C. Unmarked Burial Sites

“The Petitioner has raised concerns with the Parish Council and state authorities about the impact of the project on potential burial sites of people once enslaved on the plantations that operated in the area corresponding to the Wallace tract (p. 14).” “Recently, Forensic Architecture, an internationally recognized research agency based in London, in consultation with an expert archaeologist in Louisiana, identified a series of archaeological anomalies on the site of the proposed facility that may correspond to unmarked burial sites, as shown in the figures below (p. 25).”

D. Lac Des Allemands

“When the company pursuing the proposed facility filed an application for a Water Quality Certificate with the Louisiana Department of Environmental Quality (LDEQ), the agency responded on September 30, 2021, with concerns about impacts on Lac Des Allemands. LDEQ noted that ‘Lac Des Allemands is currently not supporting its designated use of fish and wildlife propagation’ because of ‘dissolved oxygen and non-native aquatic plants’ and requested a series

of assurances that the proposed project would “not further cause or contribute to any water quality impairment and to maintain the designated uses of the receiving watershed... (p. 27).”

“The Parish’s Comprehensive Plan emphasized the ‘recreational opportunities to local residents as well as visitors from around the country and the world’ offered by Lac Des Allemands as well as Lakes Maurepas and Pontchartrain, and the ‘tremendous economic impact to St. John Parish’ that fishing, as well as hunting and harvesting provide (p. 27).”

IV. Wallace Residents Have Repeatedly Asked the Parish Council to Address Their Concerns About the Zoning Designation of the Wallace Tract and the Proposed Facility to No Avail.

“In April 2021, they wrote to their council members asking to be placed on the council agenda to discuss the grain terminal. They received no response. On August 23, 2021, they sent a formal complaint letter and request for zoning verification in the hopes of getting answers about the zoning status and distance requirements for the plant, and also received no response. Moreover, the extensive damage caused to an existing grain terminal near Reserve by Hurricane Ida, shown below, which also blocked traffic and relief efforts for extended time after the storm, has heightened the fears and concerns of Petitioners and other Wallace residents. (p. 28).”

V. Ordinance 90-27 Is an Absolute Nullity and the Mandamus Proceeding is Warranted.

“The rezoning of the Wallace Tract was an act in derogation of numerous federal, state, and parish laws enacted for the protection of the public interest and as such was void ab initio, an absolute nullity, pursuant (p. 29).”

“The process surrounding adoption of Ordinance 90-27 was so infected with corruption and was such a severe and egregious violation of the public trust and laws enacted for the protection of the public interest that it was *void ab initio* and must be treated as ‘inoperative as if it had never been passed.’ The zoning designations originating from it must be scrubbed from all parish zoning maps, records, and documents, and be replaced with the original R-1/residential designation that preceded it (p. 30).”

RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that, after due proceedings had, this Court:

- a. “Enter a declaratory judgment that Ordinance 90-27 is an absolute nullity (p. 31).”
- b. “Order the St. John the Baptist Parish President, Parish Council, Planning Commission, and/or Director of Planning and Zoning, to remove the zoning designations originating with ordinance from all maps and zoning documents, and replace it with the original R-1/residential designation that existed before (p. 31).”

- c. "Order St. John the Baptist Parish to notify in writing all residents and property owners in Wallace, including of the Wallace tract, federal and state agencies involved in recent permit review processes of this zoning correction (p. 31)."
- d. "Order St. John the Baptist Parish to notify in writing all previous owners of property adjacent to or nearby the Wallace tract who conveyed their property to Formosa or its subsidiary Format, of the Court's order invalidating the ordinance, and providing those former property owners with a copy thereof (p. 31)."
- e. "Order St. John the Baptist Parish to undertake a comprehensive and thorough review by an independent third party, selected in consultation with Petitioners and residents of Wallace, of all of its zoning practices, procedures, and policies, to make recommendations about how to better comply with zoning laws, due process, as well as federal and state civil rights laws (p. 31)."
- f. "Any and all other relief provided as provided by law (p. 31)."