

June 8, 2023

VIA EMAIL

Hon. Rick Danielson, Council-At-Large (rdanielson@cityofmandeville.com)
Hon. Jason Zuckerman, Council-At-Large (jzuckerman@cityofmandeville.com)
Hon. Rebecca Bush, Councilmember District I (rbush@cityofmandeville.com)
Hon. Dr. J. Skelly Kreller, DDS, Councilmember District II (skreller@cityofmandeville.com)
Hon. Jill McGuire, Councilmember District III (jmcguire@cityofmandeville.com)
Mandeville City Council
3101 East Causeway Approach
Mandeville, LA 70448

*RE: Opposition to Proposed Sucette Harbor Development (Zoning Docket 22-10-02
and Conditional Use Docket 22-10-02)*

Ladies and Gentlemen:

Being a land use attorney of 25 years, I have been retained by Keep Mandeville Idyllic, Inc., a Louisiana non-profit corporation chartered as a 501(c)(4) organization under the IRS Tax Code, to review and comment on the pending Sucette Harbor Development proposed by developers Woodward Interest and Benson Capital Partners. My findings are as follows:

The Subject Property

The Sucette Harbor Project is proposed for construction on 15.012 acre Parcel D, Mariners Village Subdivision in the City of Mandeville, St. Tammany Parish, Louisiana bounded by Lake Pontchartrain to the south, Mariner's Village Marina to the west, Mariners Village Subdivision to the north and city drainage canal to the east. (the "Subject Property"). As discussed herein, these geographically limiting boundaries of the Subject Property are extremely relevant to the consideration of the proposed project as they create a significant barrier to the ingress and egress to the Subject Property.

With respect to the purported size of the Subject Property, we note that Proposed Ordinance 23-16, as well as all of the materials prepared in support thereof, including the Case Summary Sheet merely reference Parcel "D". However, based on our review of the submitted materials, it appears that a portion of the proposed project also includes a portion of Parcel "U", which was also part of the same *Act of Donation* (described below) to LSU Health Foundation, New Orleans. The omission of Parcel "U" from the application, advertisement,

public notice, review, analysis and discussion to date presents a significant and perhaps legal barrier to the City Council's consideration of Proposed Ordinance 23-16 at this time.

Ownership of the Subject Property

The public records reflect that the Subject Property is currently owned by the LSU Health Foundation, New Orleans¹, which acquired said Parcel D on December 20, 2018 from Mariner's Village Properties, L.L.C. and Mariner's Village Marina, L.L.C. (both controlled by Al Copeland, Jr.) in that certain *Act of Donation* recorded in the St. Tammany Parish Conveyance Records at Instrument No. 2140419, Registry No. 2607062. Although the Subject Property is owned by the LSU Health Foundation, the beneficial applicant for the project is development group comprised of Woodward Interests and Benson Capital Partners (hereinafter the "Developers"), which we understand intend to enter a long-term ground lease with the LSU Health Foundation for control of the Subject Property. We further note that there are no medical uses, medical research uses or educational uses proposed for the Subject Property. As such, LSU Health Foundation should be regarded as nothing more than a commercial landlord.

We further note to the City of Mandeville that the *Act of Donation* conveying Parcels "D" and "U", is also subject to that certain *Gift Agreement* by and between Mariner's Village Properties, L.L.C. and Mariner's Village Marina, L.L.C. and LSU Health Foundation, New Orleans contemporaneously with the *Act of Donation*. While we have not had the benefit of review of said *Gift Agreement*, we have pasted below the language included in the Act of Donation regarding certain terms and conditions of the *Act of Donation*:

NOW INTO THESE PRESENTS comes and appears the LSU Health Foundation, New Orleans, appearing herein through Matthew D. Altier, its duly authorized President and CEO, and takes cognizance of the within Donation and accepts the same with gratitude, subject to the terms and conditions hereof as well as the Gift Agreement of even date herewith.

Donors and the Foundation further agree that this Donation is subject to the terms of a Gift Agreement of even date herewith.

¹ The LSU Health Foundation, New Orleans is not a subsidiary of the Louisiana State University System nor is a subsidiary of the LSU Medical School, but instead is a private, non-profit corporation.

Because the public records for Zoning Docket 22-10-02 and Conditional Use Docket 22-10-02/Proposed Ordinance 23-16 do not address the potential restrictions on the Subject Property or possible reversionary rights remaining in favor of the donors, and because said donors, which appear to have real rights in the Subject Property under La. Civil Code Article 476, *et seq.*, were not a party to the pending applications, we again aver that the City Council's consideration of these matters at this time is premature and any approval of the same would fall into the category of "arbitrary and capricious."

The Subject Property's Zoning Classification

According to the official zoning maps for the City of Mandeville (hereinafter "Mandeville"), the Subject Property is currently situated in a PRD Planned Residential Development zoning district as defined in Section 7.5.15.1 of the Comprehensive Land Use Regulation Ordinance of the City of Mandeville, Louisiana (hereinafter the "CLURO").

Approving Bodies for Land Use Development

Louisiana Revised Statute 33:101, *et seq.* provides the enabling legislation for municipalities to adopt local ordinances to regulate zoning matters. The City of Mandeville has established the process for approving zoning amendments and amendments to its land use regulations in Section 4.3 of the CLURO, which includes an initial review and recommendation from the Planning and Zoning Commission and final approval by the Mandeville City Council.

However, the power of the City Council to grant waivers and variances on any deficiency of the CLURO is not plenary but restricted to those areas affirmatively granted in the CLURO and only in instances where the City Council ultimately finds that the relief sought by the applicant is consistent with the then established zoning laws of the jurisdiction, in this case, the CLURO, and more importantly, the City of Mandeville Comprehensive Plan Land Use Plan, adopted by the City on January 4, 2007 (hereinafter the "Comprehensive Plan").

LAW AND DISCUSSION

The City of Mandeville adopted a home rule charter pursuant to Article VI, § 4 of the Louisiana Constitution of 1974. Louisiana Constitution article VI, § 4, read in conjunction with article VI, § 6, allots to home rule charter local governments exclusive control over the operation, management, and internal arrangement of the component parts of its local government. *Lafourche Parish Council v. Autin*, 94-0985 (La.12/9/94), 648 So.2d 343, 356. This authority includes the power to enact and enforce zoning regulations.

Zoning is a general plan designed to foster improvement by confining certain classes of buildings and uses of property to certain localities. *Jenkins v. St. Tammany Parish Police Jury*, 98-2627 (La.7/2/99), 736 So.2d 1287, 1290. Local governments are provided with broad powers to adopt regulations for land use, zoning, and historic preservation. Louisiana Constitution article VI, § 17, provides, in pertinent part:

"[s]ubject 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."

Although local governments have the authority to enact municipal zoning regulations such as those reflected in the CLURO and the Comprehensive Plan, they do not have the unfettered authority to approve requests that do not comport with the underlying tenets of these regulations. Specifically, Louisiana Revised Statutes 33:4721 states:

"[f]or the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of all municipalities may regulate and restrict the height, number of stories, and size of structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes; provided that zoning ordinances enacted by the governing authority of municipalities or the acts of the zoning commission, board of adjustment as herein provided for, or zoning administrator shall be subject to judicial review on the grounds of abuse of discretion, unreasonable exercise of the police powers, an excessive use of the power herein granted, or the denial of the right of due process, provided, further, that the right of judicial review of a zoning ordinance shall not be limited to the foregoing."

When the City of Mandeville adopted the Comprehensive Plan in 2007 (the "Comprehensive Plan"), it did so after numerous meetings, charettes, debate and input from its citizens over a protracted period of time. The Comprehensive Plan is not merely a suggestive document but is a "master plan" with the force of law to promote the "health, safety, morals, or the general welfare of the community." In fact, at the time of the adoption of the Comprehensive Plan, the Mandeville community felt so strongly about the area of Mandeville in which the Subject Property is situated, it carved out three (3) specific "goals" addressing these areas, namely Goal

10, addressing the Lakeshore; Goal 11, addressing the Marinas; and Goal 12, addressing the Pre-Stressed Concrete Area.

Goal 11 of the Comprehensive Plan encompasses many of the concerns that Keep Mandeville Idyllic and other residents have articulated in their opposition to the proposed Sucette Harbor development. As reflected below in the extraction of Goal 11 from the Comprehensive Plan, the plan specifically states that *“increased commercialization of this area should be discouraged.”* Likewise, the Comprehensive Plan further states that *“[p]oor street access through residential neighborhoods, limited land for parking and the desire of marina owners to minimize public access to private boat docks suggest that commercial activities will be largely limited to small scale restaurant, retail and service uses.”*

Marinas. Mandeville is a lakefront community that provides access to Lake Pontchartrain for residents and visitors. Marinas, located at the east and west ends of Old Mandeville, provide unique opportunities for the establishment of mixed-use neighborhoods with a maritime focus. The marinas along Bayou Castain serve the region’s sailing community and are relatively inaccessible to the public. In recent years, there has been increasing emphasis on providing medium density residential opportunities in conjunction with these marinas. Despite the natural beauty of this setting, which overlooks State park lands, increased commercialization of this area should be discouraged. Poor street access through residential neighborhoods, limited land for parking and the desire of marina owners to minimize public access to private boat docks suggest that commercial activities will be largely limited to small scale restaurant, retail and service uses. The marina area at the north end of the causeway, which serves both power and sail boats, provides the opportunity for significant development and redevelopment activity, particularly when considered in conjunction with the vacant lakefront property to the east (see Pre-Stressed sub-area policies)

Goal 11: To provide diverse mixed-use marina environments and easy marine access for residents and visitors.

- Policy 11.1: Retain the character and intensity of the existing marinas located along Bayou Castain. Allow for a mix of residential and non-residential uses that primarily serve the sailing community using the marina. Avoid fuel sales and other businesses that would promote increased use of the Bayou for power boats.
- Policy 11.2: Provide limited public access to Bayou Castain through passive pocket parks in street rights of way that extend to the Bayou. These parks should be easily patrolled and designed to serve local residents who choose to walk or bike to the parks.
- Policy 11.3: Coordinate with marina operators along Bayou Castain and appropriate agencies to support long-term services for the sailing community.
- Policy 11.4: Encourage the development of waterfront restaurants and marine-related services for local residents, visitors and marina users near the causeway. Secure appropriate public access to these areas.

While the Subject Property is situated in the marina area closest to the Causeway, it is still very much adjacent to a quite residential neighborhood to the north similar to those surrounding the marinas to the east.

Finally, although the Subject Property is not technically in the former “Pre-Stressed Concrete Area,” given that the Subject Property is directly adjacent to the Pres-Stressed Concrete site, the same concerns for that area carry over to the Subject Property. Accordingly, in addition to tenets articulated in Goals 10 and 11 of the Comprehensive Plan, the same tenets adopted in Goal No. 12 of the Comprehensive Plan, should also be applied to the Subject Property maintains the nature and character of that discerned in the Comprehensive Plan process.

Goal No. 12 of the Comprehensive Plan states as follows:

City of Mandeville

Comprehensive Plan

Pre-Stressed Concrete Area: This area, at the west end of Old Mandeville, encompasses 78 acres that are bounded by Lake Pontchartrain, Massena Street, Monroe Street, and Mariner’s Village. The eastern portion of the property was used to produce the concrete components of the Causeway and consequently has many large concrete slabs used to support the forms. The western portion includes several residential lots and a large vacant parcel. This sub-area of Old Mandeville offers the opportunity to develop a truly unique neighborhood along the lake front. The City should work with the property owners to prepare a specific area plan that is consistent with the following policies:

Goal 12: To facilitate the development of a vibrant, walkable, mixed-use, waterfront development that provides strong fiscal benefits for the City.

- Policy 12.1: Coordinate with the property owner to mitigate traffic and other constraints to this site and plan for a mix of uses at intensities that can be supported without introducing unacceptable levels of congestion to Old Mandeville. Primary access should be provided through Mariner’s Village and from Monroe Street.
- Policy 12.2: To the extent that greater intensities can be supported by the street system, allow for heights of up to 60 feet along the waterfront and step down heights to 35 feet at the edges of the property.
- Policy 12.3: Where structures are required to be elevated, a combination of public spaces and outdoor operations shall be provided to encourage street level activity.
- Policy 12.4: Retain public access along the waterfront portions of this site.
- Policy 12.5: Retain lake vistas from key areas within the development.
- Policy 12.6: Ensure that the site layout facilitates bike and pedestrian circulation.
- Policy 12.7: Limit development along the northern and eastern edges of this area to low to medium density residential uses.
- Policy 12.8: Require development of the area to comply with new urbanist design standards and incorporate local architectural elements.
- Policy 12.9: Promote the redevelopment of Mariner’s Village in conjunction with the development of the Pre-Stressed site.

As one can see, the proposed Sucette Harbor Project runs afoul of many, if not the majority of the policies that were adopted with the 2007 Comprehensive Plan. Further, while the Developers advance the narrative that the proposed Sucette Harbor is a mixed-use development as is consistent with the adopted land use plan, one cannot reasonably argue that a 22 acre or even a 15 acre development with only two primary uses, 1) a hotel with a restaurant and wedding venue; and 2) a residential housing development for the elderly meet the definition of a “mixed-use” development embodied in the Comprehensive Plan.

Additionally, the City Council should be mindful that the proposed Sucette Harbor project is not “infill development” which is burdened with development obstacles from already developed surrounding projects, but instead presents as a white canvas or a clean slate which affords new construction that conforms with the Comprehensive Plan and the CLURO. **As such, there is no justification for variances in height, the reduction of parking spaces, or excess density in the proposed residential units and number of hotel rooms.**

Another problematic aspect of the proposed project is its proposed scale given its geographic location and access thereto. For all intents and purposed, the Subject Property is situated on a peninsula with Lake Pontchartrain to the south and the Causeway off-ramp infrastructure to the west, leaving only two (2) minor streets (Antibes East and Antibes West) running from old Mandeville as the sole access to the proposed project. **The commercial truck traffic required to support a hotel of the size proposed along with the proposed accessory restaurants and event venue would destroy the long-standing residential character of the well-established residential neighborhoods to the project’s north.**

Given the strength of these arguments supporting the deficiencies in the Developers application and proposed project, we feel certain that should the Mandeville City Council approve the Sucette Harbor Project as currently proposed, Keep Mandeville Idyllic will easily meet the threshold of illustrating that both Planning and Zoning and the Mandeville City Council acted “arbitrarily and capriciously” in recommending said approval and adopting the proposed enabling Ordinance 23-16. Under the CLURO, the City Charter, Louisiana Revised Statutes and Louisiana jurisprudence, **there is no right and therefore no expectation to a re-zoning of property. A decision to deny re-zoning would be simple and with minor risk. However, if the re-zoning is approved the project would still face serious problems with compliance with the 2007 Comprehensive Plan as stated above as well as resolution of the issues presented above.**

In fact, this project is very similar matter I handled in the recent pass in West Feliciana Parish, where the Louisiana First Circuit Court of Appeal ruled that West Feliciana’s parish’s zoning commission and parish council failed to make a good faith effort to meet the procedural requirements for zoning decisions and that the zoning recommendation and approval was therefore “arbitrary and capricious.”² I have attached a copy of the *Truitt* opinion hereto for your reference. Likewise, based on the materials contained in the public record to date, Keep

² See *Truitt v. West Feliciana Parish Government*, 2019-0808 (La.App. 1 Cir. 2/12/20), 299 So.3d 100 (2020)

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Mandeville Idyllic maintains and avers that the Developers have failed to meet the burden set forth in LSA-R.S. 33:107 of presenting evidence to the Mandeville City Council that the proposed rezoning of the Subject Property does not jeopardize the public welfare. *See also Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish, 561So.2d 482 (1990)*

CONCLUSION

While there are other articulable problems with the Sucette Harbor as currently proposed, such as the failure to adequately address the established and recorded servitudes of passage and access surrounding the proposed project, or the most certain drainage issues that will arise after constructing such a large concrete footprint within the path of the natural storm water drainage flow, the proposed project as currently proposed does not satisfy the criteria required to be met to justify the variances in the CLURO and Comprehensive Plan requested in the Developers' application. **As such, the Mandeville City Council should deny Zoning Docket 22-10-02 and Conditional Use Docket 22-10-02**

Thank you for your time and assistance in this matter. Should you have any questions regarding this opposition or wish to discuss any aspect of it, please do not hesitate to contact me directly at (

Sincerely,

cc: Honorable Clay Madden, Mayor (cmmadden@cityofmandeville.com)
Ms. Kristine Scherer, Clerk of Council (kscherer@cityofmandeville.com)

299 So.3d 100
Court of Appeal of Louisiana, First Circuit.

Peter TRUITT and Lynda Truitt
v.
WEST FELICIANA PARISH
GOVERNMENT, West Feliciana Parish
Council, and West Feliciana Parish
Planning and Zoning Commission

NUMBER 2019 CA 0808

Judgment Rendered: FEBRUARY 21, 2020

Synopsis

Background: Abutting neighbors filed petition against parish government, parish council, and parish zoning commission to overturn parish council's approval of landowner's request to rezone property from residential agricultural land to general commercial land. Parish entities filed peremptory exception of no cause of action. The District Court, 20th Judicial District, West Feliciana Parish, No. 23377, William G. Carmichael, J., granted exception. Neighbors appealed.

[Holding:] The Court of Appeal, Guidry, J., held that allegations that parish council and zoning commission failed to make good faith effort to meet procedural requirements for zoning decisions presented claim that zoning recommendation was arbitrary and capricious.

Reversed and remanded.

West Headnotes (13)

[1] Pleading No cause of action

A "cause of action," for purposes of the peremptory exception of no cause of action, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant.

[2] Pleading No cause of action

The function of the peremptory exception of no cause of action is to test the legal sufficiency of a petition by determining whether the law affords a remedy on the facts alleged in the petition.

3 Cases that cite this headnote

[3] Pleading No cause of action
Pleading Facts

On a peremptory exception of no cause of action, all facts pled in the petition must be accepted as true, and any doubts are resolved in favor of the sufficiency of the petition to state a cause of action.

2 Cases that cite this headnote

[4] Pleading No cause of action

The only issue at the trial of a peremptory exception of no cause of action is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought: if the petition alleges sufficient facts to establish a case cognizable in law, the exception raising the objection of no cause of action must fail.

4 Cases that cite this headnote

[5] Pleading No cause of action

When a petition states a cause of action as to any ground or portion of a demand, a peremptory exception of no cause of action

should be overruled.

1 Case that cites this headnote

[6] Appeal and Error ⇨ Objections and exceptions; demurrer

Appellate courts review a judgment sustaining a peremptory exception raising the objection of no cause of action de novo.

2 Cases that cite this headnote

[7] Zoning and Planning ⇨ Arbitrary, Capricious, or Unreasonable Action
Zoning and Planning ⇨ De novo review in general

A challenge to a zoning decision is a de novo proceeding on the issue of whether the result of the legislation is arbitrary and capricious.

2 Cases that cite this headnote

[8] Zoning and Planning ⇨ Scope of Review
Zoning and Planning ⇨ Public health, safety, morals, or welfare

Zoning falls under the jurisdiction of the legislature, and as such, courts will not interfere with their prerogative unless the action is palpably erroneous and without any substantial relation to the public health, safety, or general welfare. La. Rev. Stat. Ann. § 33:4721.

1 Case that cites this headnote

[9] Zoning and Planning ⇨ Scope and Extent of Review

Appellate review of a district court judgment regarding its consideration of a zoning board decision does not consider whether the district court manifestly erred in its findings, but whether the zoning board acted arbitrarily, capriciously or with any calculated or prejudicial lack of discretion.

[10] Zoning and Planning ⇨ Decisions of boards or officers in general

The terms “arbitrary and capricious,” in the context of determining whether a zoning board has acted arbitrarily or capriciously, mean willful and unreasoning action, absent consideration and in disregard of the facts and circumstances of the case.

1 Case that cites this headnote

[11] Zoning and Planning ⇨ Decisions of boards or officers in general

When there is room for two opinions, an action of a zoning board is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed an erroneous conclusion has been reached.

[12] Zoning and Planning ⇨ Scope of Review

When the propriety of a zoning decision is debatable, it will be upheld.

1 Case that cites this headnote

[13] Zoning and Planning ⇨ Map

Neighbors' allegations that parish council and zoning commission failed to make good faith effort to meet procedural requirements for zoning decisions presented claim that determination to recommend zoning map amendment regarding neighboring property was arbitrary and capricious, where neighbors alleged commission and parish council failed to consider mandatory review criteria for zoning map amendment under parish ordinance.

***101** On appeal from the Twentieth Judicial District Court, In and for the Parish of West Feliciana State of Louisiana, Docket Number 23377, Honorable William G. Carmichael, Judge Presiding

Attorneys and Law Firms

Robert L. Atkinson, Justin B. Schmidt, Thomas R. Temple, Jr., Carroll Devillier, Baton Rouge, LA, Counsel for Plaintiffs/Appellants Peter Truitt and Lynda Truitt

Dannie P. Garrett, III, Baton Rouge, LA, Counsel for Defendants/Appellees West Feliciana Parish Government, West Feliciana Parish Council, and West Feliciana Parish Planning and Zoning Commission

BEFORE: WHIPPLE, C.J., GUIDRY, AND BURRIS,¹ JJ.

Opinion

GUIDRY, J.

***102 **2** In this zoning case, the plaintiffs appeal from a judgment granting a peremptory exception of no cause of action filed by the named defendants. For the reasons that follow, we reverse and remand.

FACTS AND PROCEDURAL HISTORY

This matter arises from the actions of the West Feliciana Parish Planning and Zoning Commission (Commission) and the West Feliciana Parish Council (Parish Council) in recommending and approving a zoning map amendment.

The plaintiffs, Peter Truitt and Lynda Truitt (the Truitts), appeal the Parish Council's October 8, 2018 approval of a request to rezone 29.9 acres of property located in St. Francisville, Louisiana from an R-A, residential agriculture zoning district, to a C-2, general commercial zoning district. The Truitts own an approximate 132-acre parcel that abuts the property which is the subject of the zoning map amendment. The Truitts' primary residence is situated on the southern border of the subject property.

On or about November 5, 2018, the Truitts filed a petition to have the Parish Council's decision approving the rezoning of the aforementioned property overturned. Named as defendants in the petition were the West Feliciana Parish Government, Parish Council, and Commission. The petition sets forth a multitude of facts describing the actions of the Parish Council and Commission, as well as the actions of the members and staffs of those two bodies, in the process of approving the zoning map amendment.

In response to the Truitts' petition, on or about December 3, 2018, the named parties filed a dilatory exception of lack of procedural capacity and peremptory exception of no cause of action. On January 23, 2019, a hearing on the exceptions was held, and after taking the matter under advisement, the trial court issued written reasons. The trial court concluded that neither the Parish Council nor ****3** the Commission "were given independent juridical capacity ... but are only parts of the West Feliciana Parish Government." The trial court also decided that the stated allegations did not "arise to the level of arbitrary or capricious action on the part of the West Feliciana Parish Government."

Consistent with its written reasons, the trial court rendered judgment on February 25, 2019, granting the exception of lack of procedural capacity as to the Parish Council and Commission, and granting the peremptory exception of no cause of action. The petition was dismissed with prejudice. Now, the Truitts appeal that portion of the judgment granting the exception of no cause of action and assign the following errors: the trial court erred in granting the exception of no cause of action where the procedures utilized by the West Feliciana Parish Government to approve the zoning map amendment (1) violated applicable zoning ordinances and (2) "were an arbitrary and capricious abuse of discretion that was unreasonable under the circumstances."²

***103 DISCUSSION**

^[1] ^[2]A cause of action, for purposes of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. Ramey v. DeCaire, 03-1299, p. 7 (La. 3/19/04), 869 So. 2d 114, 118. The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. Ramey, 03-1299 at p. 7, 869 So. 2d at 118.

^[3] ^[4] ^[5] ^[6]Generally, no evidence may be introduced to support or controvert the exception of no cause of action. La. C.C.P. art. 931. All facts pled in the petition ^{**4} must be accepted as true, and any doubts are resolved in favor of the sufficiency of the petition to state a cause of action. Bayou Liberty Ass'n, Inc. v. St. Tammany Parish Council, 05-1228, p. 6 (La. App. 1st Cir. 6/9/06), 938 So. 2d 724, 728. The only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. If the petition alleges sufficient facts to establish a case cognizable in law, the exception raising the objection of no cause of action must fail. In addition, when a petition states a cause of action as to any ground or portion of a demand, the exception should be overruled. Bayou Liberty Ass'n, Inc., 05-1228 at p. 7, 938 So. 2d at 728. Appellate courts review a judgment sustaining a peremptory exception raising the objection of no cause of action *de novo*. Ramey, 03-1299 at p. 7, 869 So. 2d at 119.

^[7] ^[8]Further, a challenge to a zoning decision in Louisiana is a *de novo* proceeding on the issue of whether the result of the legislation is arbitrary and capricious. Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish, 561 So. 2d 482, 492 (La. 1990). Zoning falls under the jurisdiction of the legislature, and as such, courts will not interfere with their prerogative unless the action is palpably erroneous and without any substantial relation to the public health, safety, or general welfare. Toups v. City of Shreveport, 10-1559, p. 3 (La. 3/15/11), 60 So. 3d 1215, 1217. As provided for in La. R.S. 33:4721,

[f]or the purpose of promoting health, safety, morals, or the general welfare of the community, the governing authority of all municipalities may regulate and restrict ... the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes; provided that zoning ordinances enacted by the governing authority of municipalities or the acts of the zoning commission, board of adjustment as herein provided for, or zoning administrator shall be subject to judicial review on the grounds of abuse of discretion, unreasonable exercise of the police powers, an excessive use of the power herein granted, or the denial of the right of due process

^[9] ^[10] ^[11] ^[12]Appellate review of a district court judgment regarding its consideration of a zoning board decision does not consider whether the district court manifestly erred ^{**5} in its findings, but whether the zoning board acted arbitrarily, capriciously or with any calculated or prejudicial lack of discretion. King v. Caddo Parish Commission, 97-1873, pp. 14-15 (La. 10/20/98), 719 So. 2d 410, 418. The terms "arbitrary and capricious" mean willful and unreasoning action, absent consideration and in disregard of the facts and circumstances of the case. However, when there is room for ^{*104} two opinions, an action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed an erroneous conclusion has been reached. Toups, 10-1559 at pp. 3-4, 60 So. 3d at 1217. When the propriety of a zoning decision is debatable, it will be upheld. Palermo Land Co., Inc., 561 So. 2d at 493.

In this case, there are numerous allegations made by the plaintiffs against the West Feliciana Parish Government through the Parish Council, the Commission, and their respective staff, to include: (1) a select number of Commission members lacked the requisite number of training hours; (2) a commissioner made a public misstatement of law at a commission meeting; (3) a member of the Parish council and the Parish President made public statements in favor of the zoning map amendment; (4) the Commission and Parish Council relied, inappropriately, on an oral promise from the zoning applicant about how the subject property would be used; (5) a Council member worked with the zoning applicant in advance of the public hearing; (6) the Commission failed to consider or suggest that a Planned Unit Development District be implemented; (7) the Commission and Parish Council failed to consider review criteria relevant to the West Feliciana Parish Ordinances and a zoning map amendment; and (8) the Commission and Parish Council failed to consider the West Feliciana Parish Comprehensive Plan ("master plan") in violation of La. R.S. 33:109(B). The plaintiffs further assert that the actions of the Parish Council and Commission were arbitrary and capricious and that "[p]erhaps most significantly, the Planning and Zoning Commission acted ^{**6} arbitrarily and capriciously in recommending the approval of the Zoning Map Amendment because it clearly failed to follow the statutory requirements ... of the Planning and Zoning Chapter." Under the West Feliciana Parish Code of Ordinances, Article 5, Section 135-154(i)(4)(b), when taking up a zoning map amendment, the Planning and Zoning commission *shall consider* the recommendation of the administrator, relevant comments of all interested parties, and the review criteria of subsection (i)(6).³ (Emphasis added.)

Additionally, Section 134-154(i)(5)(b) provides that the Parish Council *shall consider* the recommendations of the administrator, Commission, relevant comments of all interested parties and the above-mentioned review criteria. (Emphasis added.)

¹³In ruling on the plaintiffs' petition, the trial court stated in its reasons for judgment, "Though the allegations may show some clerical or procedural irregularities, none, taken together or individually, *105 if true, arise to the level of arbitrary or capricious action on the part of the West Feliciana Parish Government." We find, however, that the plaintiffs have alleged sufficient facts to state a cause of action, particularly where the plaintiffs allege that the Commission and Parish Council failed to consider the seven review criteria set forth in Section 135-154(i)(6).

****7** Specifically, the plaintiffs herein assert that the Commission is legally obligated to make a good faith effort in meeting the statutory requirements of Section 135-154(i)(4)(b), noting, in accordance with the ordinance, that they "shall" consider the seven review criteria. The plaintiffs allege that "no such consideration" is contained in the produced public records. In addition, they allege that the Planning and Zoning Department's internal records on the proposed zoning map amendment are "completely devoid of any formal or informal notes, observations, written reports, minutes from internal discussions ... or a more formal written preliminary staff report," which would indicate that a good faith effort was made to comply with Section 135-154(i), and that the Parish Council took action on the zoning map amendment without considering the review criteria. Accepting the allegations in the petition as true, the plaintiffs, thus, have alleged facts sufficient to give rise to an action based on the failure of the West Feliciana Parish Government to consider the review criteria, amounting to actions which are arbitrary and capricious, or an abuse of discretion.

Footnotes

- 1 Judge William J. Burris, retired, serving *pro tempore* by special appointment of the Louisiana Supreme Court.
- 2 The plaintiffs were granted an appeal from the trial court's February 25, 2019 judgment. (R. 150-153) However, on appeal, issues pertaining to the dilatory exception were not urged by brief or otherwise. Therefore, we do not address the dilatory exception and deem any appeal of that exception abandoned. See Rule 1-3, Uniform Rules, Courts of Appeal; McNamara v. The Electrode Corporation, 418 So. 2d 652, 654 n.1 (La. App. 1st Cir. 1982).
- 3 Under Article 5, Section 135-154(i)(6), review criteria for a zoning map amendment include:

In Bayou Liberty Ass'n, this court found that the defendant parish council had abused its discretion by violating a parish zoning ordinance. This court thus reversed the decision of the trial court, which had granted the defendant's exception of no cause of action. Bayou Liberty Ass'n, 05-1228 at p. 8-9, 938 So. 2d at 729. Here, while we recognize that the underlying facts and allegations in Bayou Liberty Ass'n differ from those in the present action, it is nonetheless our opinion that the plaintiffs have stated a cause of action by alleging facts to show a violation of the West Feliciana Parish Code of Ordinances. Having so found, we pretermitt any discussion of the plaintiffs' remaining allegations and assignment of error.

****8 CONCLUSION**

For the foregoing reasons, the February 25, 2019 judgment of the trial court granting the exception of no cause of action filed by the West Feliciana Parish Government, West Feliciana Parish Council, and West Feliciana Parish Planning and Zoning Commission is reversed. This matter is remanded to the trial court for further proceedings. Costs of this appeal are assessed to the appellees, the West Feliciana Parish Government, West Feliciana Parish Council, and West Feliciana Parish Planning and Zoning Commission.

REVERSED AND REMANDED.

All Citations

299 So.3d 100, 2019-0808 (La.App. 1 Cir. 2/21/20)

- a. The proposed zoning map amendment is consistent with the pertinent elements of the parish comprehensive plan;
- b. The proposed zoning map amendment is consistent with the areas designated context;
- c. The proposed zoning map amendment will reinforce the existing or planned character of the neighborhood;
- d. The site is appropriate for the development allowed in the proposed district;
- e. There are substantial reasons why the property cannot be used according to the existing zoning;
- f. The capacity of public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, police, fire and emergency medical services are adequate for the development allowed in the proposed district; and
- g. The zoning map amendment will not substantially or permanently injure the appropriate use of adjacent conforming properties.

From: l

Council members, first I want to say that I am sorry I didn't recognize you when I entered the Spitzfaden Center before the recent Council meeting. I am the little, white-haired lady who asked who you were. Thank you for serving the City. I thought you handled the meeting extremely fairly and efficiently. I have not been involved in City politics for a long time. I guess I hoped that I didn't need to do this again.

I am hoping that since it seems clear that the City Council is not legally required to change the zoning of the Sucette tract, that the Council will agree to vote and not approve a change of zoning for it. I will be leaving town next week and not returning until July 8. I will not be able to attend possible additional meetings concerning Sucette Harbor, so I am putting all, well most, of what I would like to say in this LONG email.

The Sucette Harbor website says, "the design is inspired by the rich, historical charm of Old Mandeville." It is my opinion that whoever did the design has **never** seen Old Mandeville. "Old Mandeville" was open for tours of **charming, historic** homes on Mother's Day. There is nothing "Old Mandeville" about that planned development!

My soon to be 55 yr old son and his wife recently moved into a 2800 sq ft house they built on Jefferson near Marigny (no children at home) because he wanted to be able "to walk to 8 restaurants." Some **low density** development on the LSUHF property with restaurants and a shopping area similar to the Girod St area might be good for Mariners Village and residents at the West end of Lakeshore Dr. The **dense density** (yes, I wrote that) is absolutely incompatible in every way with Old Mandeville. You may compare the area of the Sucette proposal (500 apartments, a hotel, an events center, marina service area, retail stores and literally hundreds of cars) to other areas of Mandeville using the maps I sent.

In case the Council decides to approve a zoning change, I offer some ideas to consider. Pardon me if these were previously addressed.

Developer said the traffic plan for the building period would be presented "later." NOT later, please. I also think that there might be other questions about taxes and about "donations" to LSUHF, which, as a non-profit, pays no taxes.

There ought to be a provision to assure there will NEVER be a casino.

If retail spaces are not rented, they may not be converted to apartments. This is happening often in the DFW area.

There should be some understanding beforehand about what happens if all apartments are not leased to 55+ adults. Will there be serious regulations regarding who tenants may wish to allow to reside there, long or short term? No AirB&B allowed. It all sounds like pre-assisted living apartments to me. I can think of no good way to have control over this.

There are MANY questionable issues regarding this whole project! All of this, and Pre-stressed looking over our shoulders!

For the record, I would like to share some of my personal memories and experiences of "Old Mandeville" where I have spent 46 years of my life. My pharmacist husband, George, and I grew up on the south shore. In 1966, George started doing relief work at Senac Drugs in Mandeville and was offered the full-time position. I had very fond memories of Girl Scout camps in Mandeville and Covington and was

enthusiastic about moving to Mandeville. Then, there were only a few houses in New Golden Shores and few scattered around town. Most of Mandeville was trees.

I will never forget, back then, approaching the Town of Mandeville on the single Causeway bridge, you could actually smell the pine trees and honeysuckle. 100 ft tall pine trees were everywhere! It was marvelous to the senses.

A year or so later, we bought a lot 125'x130' in West Beach Parkway for \$5000. We moved into a home we built there in 1969. With our 3 children, we were able to walk a block and one half to the lake, swim, crab, and fish. George and a friend, with galvanized tubs tied to their waists, sometimes went wade fishing in the lake. They would bring home speckled trout for dinner.

In old Mandeville then, we frequently saw large flocks of birds including heron and egret fly across the sky. For many years, everywhere you went there were egrets in the ditches stalking frogs and minnows.

I could see through the trees from my kitchen window what the sunsets were going to look like and would sometimes hurry to the lake to watch. After sundown the frogs began their songs, low and loud. The stars at night were spectacular. And in their season, lightening bugs filled the woods around us for years before they lost to the mosquito spray.

One Easter Eve, we were driving home and spotted the Easter Bunny hopping from the neutral ground into a wooded lot next to our home. Our boys loved camping and playing in the woods and collecting snakes. In 1981, they found a red hog nose snake and named it Betty Davis Eyes. If you threatened Betty, she would hiss at you like a Cobra. If you persisted, she would roll over and play dead, impressing anyone who watched. The boys and their friends would bring her to the ball field and delight in frightening the girls.

Our younger son and his local band played once at Ruby's Roadhouse and we took my 90 year old uncle, who moved to Mandeville shortly after the first bridge opened, to Ruby's to watch.

I remember "the Mardi Gras Massacre" and Chef Rene Nicholas losing his restaurant business because, over objections from his patrons, he clearcut the property before he built his beautiful new building.

Our daughter, in 1992, chose the magnificent old oak that hangs to the ground near the west end of the lakefront as the location for her wedding ceremony. Her Canadian husband's family and friends were quite impressed with the venue, just a few blocks from our home.

In 1970s, I think (sorry I have not been able to find the date), we heard that someone wanted to build condominiums on the lakefront in West Beach Parkway Subdivision, historically, one of the first "self-identified subdivisions" in the country. George and I were among the "new-comers" who feared Mandeville would become Veterans Hwy. We organized with other property owners and used the original subdivision record in a court case to ban construction of condominiums in the subdivision. I believe that was the beginning of conscientious planning and zoning in the Town of Mandeville.

At the May 25th Council meeting, Brian Jakes, a Mandeville resident and board member of LSUHF encouraged approval of the Suzette Harbor development. He said that he'd lost his wife to cancer and wanted the LSUHF to benefit from the development. Mr Jakes lamented, "Growth is tough. Growth is difficult." (NOLA.com, May 26,2023)

As a cancer survivor myself, I emphasize with Mr Jakes and his desire for more cancer research. I was fortunate to get excellent care at the Mary Bird Perkins Cancer Center at St Tammany Hospital and not have to travel for treatment. Cancer research and the LSUHF, however, have NOTHING whatsoever to do with the Mandeville City Council's decision regarding Sucette Harbor.

The same NOLA.com article stated that the Mariners Village Association "heralded the plan as a way to bring new life to the vacant property." I wonder if the residents actually voted?

"Growth" is difficult. "Progress" is difficult! At the May 25 meeting, Council members briefly discussed the purchase of a piece of "vacant land" west of the bridge to create a park. Mandeville does not need more extremely dense developments. We need more "vacant land."

For 10 years after we lost our home on West Beach Parkway to Katrina, we lived in Lacombe, where we owned a pharmacy. But for a total of 46 years, George and I have lived in Old Mandeville. I have gotten emotional remembering the blessing Mandeville has been to my family. Many of the endearing qualities of Mandeville that I have recalled are gone forever. I fear that many people who came here more recently do not truly appreciate what we still have. I hope that after the careful consideration which you have given to the issue, you will not accept Sucette Harbor's request and will preserve Old Mandeville for those of us who love her.

The morning after the May 25 meeting as I walked into West Beach Parkway, I saw a crow chasing away a bald eagle. I hope it was an omen. Thank you for your service on the council and for indulging a little old lady's reminiscing.

Sincerely,