

**23RD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES
STATE OF LOUISIANA**

<p>BEVERLY ALEXANDER, et al.</p> <p style="text-align:center"><i>Petitioners,</i></p> <p style="text-align:center">vs.</p> <p>ST. JAMES PARISH,</p> <p style="text-align:center"><i>Defendant.</i></p>	<p>NUMBER: 41903 DIV "B"</p>
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PETITIONERS' BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

Before this Court is a simple question: whether St. James Parish officials must follow their own land use ordinance when permitting industrial projects within their own community. Because they must, and because they did not when granting Koch Methanol's request to expand its operations—including into local wetlands—Petitioners respectfully request that this Court vacate the Parish's permitting decision.

On July 31, 2023, the St. James Planning Commission ("Planning Commission" or "Commission") improperly approved an application it had received just over two weeks earlier from Koch Methanol St. James LLC ("Koch") to expand its operations. The expansion would greatly increase the facility's air emissions and require construction of a 3,000-foot ethane pipeline through adjacent wetlands. However, the Commission did not have the authority under the Parish's Land Use Ordinance ("the Ordinance") to approve this application. Because it involved construction in wetlands, the Commission was required to consider the proposal and assess mandatory criteria set out in the Ordinance and make a recommendation to the St. James Parish Council ("Council"), which was supposed to undertake its own review and make affirmative findings required by the Ordinance. As the Parish freely admits, none of this happened.

Instead, because the Commission and the Council failed to follow the proper procedure, Petitioners were saddled with the burden of getting the issue before the Council by appealing an already-improper and invalid decision, and trying to get the Council to undertake the considerations and make the affirmative findings required of it by the Ordinance. On September

27, 2023, the Council denied Petitioners' appeal and sustained the Commission's approval of the expansion.

Petitioners are residents of St. James—including from the Fifth District where this facility is sited—who have been long overburdened by the Parish's pattern of rubber-stamping land use applications from industry in its majority African American districts. As they have done many times before, Petitioners urged the Council to weigh the harms to their health and the environment, and put forward substantial evidence about the serious impacts this Project would have on the quality of the air they breathe and the environment in which they live, as well as evidence showing the lack of commensurate economic benefit from the Project. The Council disregarded Petitioners' concerns and evidence—and its obligations under its own law—when it denied Petitioners' appeal.

This decision requires reversal for two reasons: First, the Commission's decision was void *ab initio* because it improperly approved the project's expansion into wetlands—a non-allowable use under 82-25(c) of the Land Use Ordinance—without referring it to the Council for its full consideration and approval, pursuant to 82-25(e). As a result, the Commission's decision must be deemed as though it never existed.

Second, even setting aside the initial illegality of the Commission's decision (which also nullifies anything that came after), when viewed on its own the Council's action must be deemed by any measure to be arbitrary and capricious. As the Parish has acknowledged, the Council did not follow the procedure set out in 82-25(e) and as a result, it failed to make the affirmative findings required under that provision that there was “a compelling public benefit, that the use is compatible with surrounding uses and adverse impacts of the use are inconsequential.” Indeed, the Council made no mention of wetlands whatsoever. Its complete disregard for the impacts of substantial, non-allowable industrial construction into protected wetlands was in itself arbitrary and capricious, requiring reversal.

Likewise, the Council failed to consider additional factors enumerated under 82-25(h), which is required for projects requiring a state air permit in accordance with 82-25(f). Critically, these factors include “[t]he physical and environmental impacts of the proposed use on the air, water, and land with particular attention to whether the public benefits of the proposed use are commensurate with those impacts, and whether the environmental impacts may impair the ability

of the parish to attract other beneficial development.” Ord. Art. II, § 82-25(h)(3). The Council was completely silent as to these factors.

Finally, the record demonstrates that whatever considerations the Council *did* take into account did not pertain to public safety, health, or general welfare, and are further evidence of an improper, arbitrary and capricious exercise of the Parish’s police powers.

JURISDICTION

This Court has authority to hear and rule on Petitioners’ petition for judicial review. First, subsection 82-25(e) of the Ordinance unequivocally allows “[a]ny person aggrieved by a decision of the parish council under this subsection [to] appeal to a court of competent jurisdiction within 30 days of the decision of the parish council.” Ord., Art. II § 82-25(e). This subsection of the Ordinance governs the procedures for approval of uses not specifically listed as allowable uses in the Land Use Plan. Petitioners assert that the Parish violated this provision of the Ordinance when the Planning Commission unlawfully approved and the Council later upheld a use for the Koch expansion (the “Project”) in wetlands—a use not listed as allowable—without following the clear procedures set forth therein. The 23rd Judicial District Court is therefore a court of competent jurisdiction that can review the Council’s unlawful decision.

Further, “[i]t is well settled that the right of judicial review of administrative proceedings is presumed to exist.” *Delta Bank & Trust Co. v. Lassiter*, 383 So.2d 330, 335 (La. 1980) (finding a right to judicial review even where the challenged action was not an adjudication under the Administrative Procedure Act). Indeed, “[t]he right to judicial review of an administrative decision is part of the constitutional right to due process of law and cannot be denied by . . . statute.” *Ogburn v. City of Shreveport*, 614 So.2d 748, 753 (La. App. 2d Cir. 1993). More specifically, Article I § 2 and § 22 of the Louisiana Constitution protect due process and require that “[a]ll courts shall be open, and every person shall have an adequate remedy by due process of law and justice . . . for injury to him in his person, property, reputation, or other rights.” La. Const. Art I § 22. Even where “a statute creating or regulating the actions of a public board or agency fails to provide for a judicial review . . . [i]n such a situation . . . it cannot be assumed that the Legislature intended to deprive one aggrieved of his ordinary right to a . . . review of an adverse action in the courts.” *Pettit v. Penn*, 180 So.2d 66, 70 (La. App. 2d Cir. 1965). “[T]o state a cause of action for review of an administrative action, the aggrieved party must allege facts on which the reviewing court can conclude that the administrative agency

abused its discretion.” *Delta Bank*, 383 So.2d at 336. Petitioners have alleged these facts—and in this brief demonstrate how the Parish abused its discretion—and thus have a cause of action.

Additionally, Petitioners are “aggrieved” persons under the Ordinance and therefore have the right to bring this action.¹ Petitioners RISE St. James, Inclusive Louisiana, and Mount Triumph Baptist Church are associations with individual members and congregants who live in St. James Parish’s Fourth and Fifth Districts where the Parish has concentrated heavy industrial facilities like Koch Methanol, and whose health and properties will be further negatively impacted by the Project’s harmful air emissions and destruction of critical wetlands. R. 86; 90-91. Petitioner Beverly Alexander is an individual member of RISE St. James who resides in St. James and whose health and property would be negatively impacted by those same emissions and wetlands destruction. The protection of human health and the environment are core to Petitioners’ missions as advocates for environmental and racial justice in St. James Parish.²

Consistent with the Ordinance’s standard and codal law, courts have routinely allowed third parties with real and actual interests in their claims to bring challenges to zoning and land use decisions by local governments. *See, e.g., Garden Dist. Prop. Owners Ass’n v. City of New Orleans*, 98 So.2d 922 (La. App. 1957) (property owners’ association, organized as a nonprofit corporation under charter specifically reciting that its purposes should include enforcement of zoning regulations, had sufficient real and actual interest to maintain suit to prevent issuance of certificate of use or occupancy for nonconforming use); *Barkman v. Zoning Appeals Bd. of Jefferson Par.*, 442 So.2d 1237, 1238 (La. Ct. App.1983) (third-party challenge to decision by parish zoning board of appeals to issue building permit to neighbor); *Vieux Carre Prop. Owners, Residents & Associates, Inc. v. Decatur Hotel Corp.*, 99-0731 (La. App. 4 Cir. 11/10/99); 746 So.2d 806 (property preservation association had standing to assert claims on behalf of its members in action which sought declaratory and injunctive relief based on allegation that use of property as hotel violated comprehensive city zoning ordinance and other city regulations).³

¹ *See also* La. C.C.P. art. 681 (providing that an action can be brought by a person having “a real and actual interest which he asserts.”).

² Indeed, the United States District Court for the Eastern District of Louisiana recently found that these same organizational Petitioners had standing to challenge decisions made under the St. James Parish Land Use Plan on the basis, in part, that they alleged a pattern and practice of racial and religious discrimination, violating their rights to equal protection and bodily integrity. *See Inclusive Louisiana et al. v. St. James Parish et al.*, No. 23-987, 2023 WL 7920808 at *6-9 (E.D. La. Nov. 16, 2023) (finding standing to bring constitutional and statutory claims on the theory that Petitioners had suffered health and property-related harms).

³ Other courts have allowed actions by third parties challenging land use or zoning decisions without explicitly addressing standing in their rulings. *See, e.g., Cent. Metairie Civic Ass’n v. Par. of Jefferson*, 478 So.2d 1298, 1301 (La. App. 5 Cir. 1985), *writ denied sub nom. Cent. Metairie Civic Ass’n v.*

Petitioners have asserted such a violation: the Planning Commission transcended the scope of its lawful duties when it improperly approved the Koch land use application pursuant to the wrong provision in the Land Use Ordinance, an illegal action compounded when both the Commission and the Council failed to make the findings required under subsection 82-25(e) of the Ordinance and the Council failed to take into account the appropriate considerations under subsection (h).

STANDARD OF REVIEW

The Petitioners' claim that the Parish failed to follow the correct procedure in the Land Use Ordinance is subject to *de novo review* because it raises a question of law; namely, that because the Planning Commission, and not the Council, approved Koch's application, the resultant approval was unlawful and therefore null and void. *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416, p. 9 (La. App. 5 Cir. 3/9/22); 337 So.3d 534, 540, *writ denied*, 2022-00587 (La. 6/1/22); 338 So.3d 491 ("The proper interpretation of the language of a statute or Parish ordinance is a question of law requiring *de novo* review."). *See also Normand v. 1st Lake Realty, Inc.*, 12-797, p. 6 (La. App. 5 Cir. 5/23/13), 119 So.3d 610, 613, *writ denied*, 2013-1482 (La. 10/4/13), 122 So.3d 1020 (interpretation of term as it applies to parish ordinance imposing occupational license tax is a question of law subject to *de novo* review).

Should the Court determine that the Parish did not violate its own Ordinance when the Planning Commission approved the application, the Court must determine whether the Parish's denial of Petitioners' appeal was arbitrary and capricious. *K.G.T. Holdings, LLC v. Parish of Jefferson*, 14-872 (La. App. 5 Cir. 3/25/15), 169 So. 3d 628, 632 (holding that parish council's decision to deny subdivision application was arbitrary and capricious because it did not uniformly apply its zoning regulations). When determining whether the land use decision has violated that standard, the court "must ask whether the decision bears so little relationship to public safety, health, or general welfare as to render it arbitrary and capricious." *Id.*

Jefferson Par., 481 So.2d 631 (La.1986) (civic association and individual residents sued Parish over decision to grant a variance for a development project); *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1 Cir. 11/9/11) (noting ruling in earlier proceedings brought by civic association that district court had ruled the conditional use permit was void ab initio); *Davis v. Town of St. Gabriel*, 2001-0031 (La. App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied*, 2002-0771 (La. 10/14/02); 827 So.2d 420, and *writ denied*, 2002-0803 (La. 10/14/02); 827 So.2d 420 (in case brought by third party individual, court found agreement between town and a gaming consulting firm was an absolute nullity and variance issued based upon that agreement was unlawful such that any construction pursuant to the invalid permit would be illegal); *Folsom Rd. Civic Ass'n v. Par. of St. Tammany Through St. Tammany Par. Council*, 425 So.2d 1318, 1320 (La. Ct. App. 1 Cir. 1983) (civic association successfully challenged the parish's failure to follow the requirements of its own ordinance when it approved a preliminary subdivision plan).

The Louisiana Supreme Court has defined “capricious” as “a conclusion of a commission when the conclusion is announced with no substantial evidence to support it, or a conclusion contrary to substantiated competent evidence.” *Lake Terrace Prop. Owners Ass'n v. City of New Orleans*, 567 So.2d 69, 74-75 (La. 1990). The Louisiana Supreme Court further defined the term “arbitrary” as when the public body “implies a disregard of evidence or the proper weight thereof.” *Id.*

Additionally, evidence that an administrative body “did not follow its own binding procedures” is evidence that “its decision was arbitrary and capricious, and not entitled to deference.” *Kaltenbaugh v. Bd. of Supervisors*, 2018-1085, p. 18 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145.

FACTUAL BACKGROUND

Koch Methanol and the Proposed Project

Koch Methanol St. James, LLC is a methanol production facility located in St. James Parish’s Fifth District on the west bank of the Mississippi River (“the Facility”). R. 7. The Facility has been operating since 2015 and currently produces about 5,000 tons per day of methanol on a 1,300-acre site. R.1, 7.⁴

In July 2023, Koch Methanol applied to the St. James Parish Commission for land use approval related to a proposed expansion (“the Project”). R. 1.⁵ The Project would increase the refined methanol production of the Facility by 25%, from 4,950 metric tons per day to 6,200 tons of methanol. R. 1. It would also require construction within the Facility’s current footprint and development of adjacent wetlands. R. 7-8

In their appeal to the Council, Petitioners put the Parish on notice that the Project would have widespread, permanent impacts on the local environment and create compounding health and environmental risks for local residents. R. 75-93. First, if built, it would significantly increase permitted emissions of criteria pollutants by a full 75%. R. 181-182; 94; 260-62. Criteria pollutants are common pollutants for which the U.S. Environmental Protection Agency (EPA) has set health-based air quality standards due to their known impacts on health and the environment. Specifically, the Project would increase permitted emissions of particulate matter

⁴ The Parish first granted land use approval for this methanol production facility to Yuhuang Chemical Industries Inc. (“YCI”) Methanol in 2015. Koch Methanol took over an ownership stake in the facility in 2019. There was vociferous opposition from residents when the Facility was first sited. R 86.

⁵ This proposed expansion has both an operational component—the Facility proposes a 25% increase in methanol production—and a physical component requiring the construction of a sizable ethane pipeline through wetlands. R. 1, 7-8.

(PM10 and PM 2.5) and nitrogen oxides (NOx) by about 50%, and carbon monoxide (CO) and volatile organic compounds (VOCs) will approximately double. R. 181-182; 94. Indeed, Koch’s Project will convert the Facility into a major source of air pollution under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act, which means that the emission limit increases Koch seeks will result in its Facility’s permitted emissions of nitrogen oxides, carbon monoxide, and volatile organic compounds each exceeding 100 tons per year. R. 376. As described by Koch itself in its Louisiana Department of Environmental Quality (LDEQ) permit application documents, which Koch attached to its Land Use application submitted to the Council in September 2023: the “proposed Project along with other requested permit revisions will result in increases in facility-wide emissions of Prevention of Significant Deterioration (PSD) regulated pollutants *that will result in the KMe Facility being classified, for the first time, as a major source under the PSD program.*” R. 243 (emphasis added).⁶ Each of these air emission increases and the associated health impacts is reflected in the table below:

Pollutant	Current Permit Limit (tpy)	Proposed Permit Limit (tpy)	Distance from Koch Methanol to Nearest LDEQ Air Monitor	Disparity Factor*	Health Effects from Chronic Exposures**
PM10	50.33	76.30	38 miles (Baton Rouge)	10.5	Respiratory disease, irritation of eyes, nose and throat
PM2.5	48.87	75.32	16 miles (Thibodaux)	19.7	Respiratory disease, lung cancer, heart disease, low birthweight
NOx	96.86	152.84	18 miles (Dutchtown)	7.4	Respiratory disease, irritation of eyes, nose and throat
CO	96.53	181.46	38 miles (Baton Rouge)	9.0	Possible heart disease, possible harm to developing fetus
VOCs	88.36	166.34	18 miles (Dutchtown)	12.9	Impacts depend on type of VOC

Table 1. Key health-related information for criteria pollutants that Koch Methanol proposes to emit in significantly higher quantities. R. 94.

* Disparity factor is the ratio of industrial emissions in Black versus White communities in Louisiana. For example, industrial operations in predominantly Black census tracts emit 9 times more carbon monoxide (CO) compared to industrial operations in predominantly White census tracts. See *Terrell and St. Julien, 2023. Discriminatory Outcomes of Industrial Air Permitting in Louisiana, United States. Environmental Challenges. Volume 10, 2023, 100672, ISSN 2667-0100, <https://doi.org/10.1016/j.envc.2022.100672>.*

** U.S. Centers for Disease Control. Particle Pollution. Available at https://www.cdc.gov/air/particulate_matter.html. See also Nitrogen Oxides. Available at <https://www.atsdr.cdc.gov/toxfaqs/tfacts175.pdf>. See also Toxicological Profile for Carbon Monoxide. Available at <https://www.atsdr.cdc.gov/toxprofiles/tp201.pdf>.

⁶ Petitioners have acknowledged the distinction between the Facility’s status under the Clean Air Act with respect to the Part 70 operating permit and PSD construction permit in their Supplement to Appeal. R. 375-376 (citing LDEQ data). Koch operates the Koch Methanol Plant and adjacent Koch Methanol Terminal, collectively referred to as the “KMe Facility.” R. 375. The KMe Facility constitutes a single major stationary source under the Part 70 Operating Permits Program. R. 375. For the expansion projects that are the subject of this petition, Koch applied for a Part 70 Air Operating Significant Permit Modification and Initial Prevention of Significant Deterioration (“PSD”) Permit. R. 375-76. With this permitting action, the existing stationary source will become a PSD major stationary source. R. 376.

Because the Parish has already approved significant industrial development in the area, these new emissions would combine with already-permitted emissions to push the Parish closer to violating federal standards under the National Ambient Air Quality Standards (“NAAQS”). R. 260-262; 374-375. Concerningly, the proposed expansion would bring St. James Parish much closer to “nonattainment” status with NAAQS limitations for NO₂ in particular. R. 260-262; 374-375. The NAAQS are set to protect public health, and a finding of nonattainment would have not only serious public health repercussions for the Parish, but also could necessitate more stringent permitting requirements for new industrial projects and retrofits at existing facilities. R. 374-75, 533.

In addition to increasing the permitted emissions of criteria pollutants, the Project would substantially expand the permitted emissions of toxic heavy metals including arsenic, barium, cadmium, chromium, cobalt, copper, manganese, mercury, nickel, and zinc. R. 182-183; 80-81; 95-97. Permitting of these heavy metals, not previously included in Koch permits, would result in a 3,000% increase in the toxicity of the Facility’s permitted emissions. R. 182-183; 80-81; 95-97.⁷ Each of these has serious health effects, even in small levels, and have been linked to lung cancer, leukemia, respiratory disease, brain and nerve damage, kidney damage, and birth defects. R. 80-81.

Moreover, the permitted emissions may not capture the full emissions potential of the Facility because Koch has a history of exceeding its permit limits. R. 81-82. Specifically, since June of 2021, Koch has exceeded its ammonia limits at least six times. R. 82. And in October of 2022, the LDEQ sent the facility a warning letter regarding areas of concern from an inspection report.⁸ R. 82.

The Project would also have physical impacts on areas not intended for industrial development, including wetlands. The Project would expand beyond the Facility’s current footprint into an area specifically designated as Wetlands under the Ordinance to build almost 3,000 feet of pipeline and corresponding access road for the transportation of highly flammable ethane gas, a portion of which would cross directly under Highway 3127. R. 102.⁹ And although

⁷ Because these metals were not listed in Koch’s prior permitted emissions, it is unknown how much the actual emissions of these toxic metals will increase as a result of the Project. Koch did not disclose that information in the Parish proceedings.

⁸ In fact, the parent company of Koch Methanol St. James, Koch Industries, ranks sixth in the nation for environmental penalty cases since 2000. R. 81-82.

⁹ When Petitioners appealed Koch’s application, they believed that the proposed ethane pipeline would be 1,000 feet, based on Koch’s representation in its application. R. 43, 99. However, in subsequently discovered materials in Koch’s application for a Coastal Use Permit to the Louisiana Department of

the current site has a land use designation of “Industrial,” it immediately abuts areas designated as “Residential Growth.” R. 198; 75.

Wetlands are a critical resource to Louisiana’s coastal zone—they play an essential role in protecting communities from flooding and storm water. R. 90-91. In an area that frequently faces hurricane risk, they are an especially important resource for ensuring resiliency and safety for local residents and industrial machinery alike. R. 90-91. Further, they are fundamentally prone to change as they expand and contract with rain events. R. 545.

This expanded footprint and significant increase in harmful emissions would not be matched with economic benefit. Koch’s application to the Council projected the creation of only two full-time jobs for the Project, which may or may not go to local residents. R. 202-203; 13.¹⁰ The company has also been describing the Project as an “automation process,” calling into question whether this Project could even result in a net loss of jobs. R. 373, 537. At the hearing on Petitioners’ appeal before the Council, the Council itself affirmed that even those two jobs were not assured because with respect to jobs, “[t]here is no promise. There’s an estimate.” R. 560.¹¹ In exchange for these two potential jobs, Koch applied for and received tax relief from St. James Parish under the Industrial Tax Exemption Program (ITEP). R. 77-78; 98. Through ITEP, the total estimated property tax exemption for Koch comes to over \$7 million in taxes for the ten-year exemption period, (assuming renewal at year five for another five years, which is almost always granted). R. 387. This will excuse the Facility from 80% of the taxes otherwise due to the Parish. R. 374.

Natural Resources (LDNR), it appears the planned pipeline would be 2,909 feet in length. It is not clear from Koch's presentation the extent of the full pipeline length's intrusion into Wetlands, which is why the Council skipping this step is such a problem—because it did not undergo this assessment, the extent of the degradation is unchecked. *See* “Maps and Drawing Instructions, Application for Coastal Use Permit No. 20230570, available at https://sonlite.dnr.state.la.us/ords/f?p=129:602:103008470647864:::602:P602_APPLICATION_NUM,P602_APPLICATION_NUM_LINE_ID,P602_SHOW_APPL_EMAIL:31466,7,N.

These LDNR documents are not in the official record before this Court but this Court may take judicial notice of publicly available government documents. The Louisiana Code of Evidence defines a judicially noticed fact as “one not subject to reasonable dispute” because it is either “(1) [g]enerally known within the territorial jurisdiction of the trial court; or (2) [c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” La. Code Ev. Art. 201(B). Because these records are publicly-available through the state-maintained Sonris Database, they meet the second prong of Art. 201(B), and this Court may take judicial notice of them.

¹⁰ Koch also *estimates* that the proposed project will provide *up to* 400 temporary jobs. R. 517. As the Parish itself explained, there is no guarantee how long these positions will be needed, how many will go to St. James, or if 400 people will in fact have temporary employment. Given Koch’s insistence that the Project involves only upgrading existing facilities, and given the temporary nature of however many jobs it in fact creates, this benefit is just as described: temporary and without a clear benefit to St. James residents.

¹¹ In Petitioners’ appeal and in testimony to the Council, Petitioners noted that Koch had first promised 276 jobs for this facility in its original ITEP application but only employs 113 people. R. 98, 373, 538.

The Impacts of the Project on the Surrounding St. James Parish Community

St. James Parish has consistently and deliberately permitted a high concentration of industrial development in the Fifth District where the Project would be sited, even in the face of repeated, vociferous opposition from local residents. R. 86; 546-547; 548-550. Indeed, because of this pattern of permitting, the EPA’s EJSCREEN data show that residents of the Fifth District, the majority of whom are African American, have among the highest rates in the nation for pollution-related health risks. R. 184-190. Specifically, residents within a 3-mile radius of the existing Koch Methanol St. James facility are in the 89th percentile statewide and 95th-100th percentile nationwide for cancer risk from exposure to toxic air pollution. R. 185. They are also in the 90th percentile statewide and the 95th to 100th nationwide for respiratory hazards from toxic air pollution. R. 185. Petitioners are among those who live, work, and congregate in the 5th District and who have been exposed to heightened health risks because of the levels of carcinogens and other harmful pollutants in their air. R. 75; 546-547; 548-550.

Local residents have repeatedly put the Parish on notice about these risks, including when the facility was originally sited in 2015, and more recently, through a federal court lawsuit detailing systematic and discriminatory land use decisions in the Parish. R. 86; 91-92; 539-541; 546-547; 548-550. *See also Inclusive Louisiana et al. v. St. James Parish*, No. 23-987, 2023 WL 7920808 (E.D. La. Nov. 16, 2023). Petitioners—organizations with members living in St. James Parish, including in the 5th District, and Beverly Alexander, an individual who has lived in the 5th District her whole life—breathe the air this facility would pollute. R. 75.

PROCEDURAL BACKGROUND

On July 12, 2023, Koch applied for a Land Use Permit with the St. James Parish Planning Commission. In its application, it sought approval to expand production at its current production facility and install a pipeline and access road through wetlands to convey ethane to the facility. R. 1-42. Collectively, Koch referred to these two components as its “Optimization Project.” R. 11-12. On July 31, 2023, the Parish Planning Commission approved that application. R. 72-74.

Thirty days later, on August 30, 2023, Petitioners Beverly Alexander, RISE St. James, Inclusive Louisiana, and Mt. Triumph Baptist Church appealed the Planning Commission’s decision to the St. James Parish Council. R. 75-190. That appeal detailed, among other points, that Koch’s application to the Planning Commission made certain critical omissions, that the public benefits of the project would not outweigh its harms, that the project would have

significant real and potential environmental impacts, that the company did not meaningfully engage with impacted communities who are already overburdened by pollution, and that it would impermissibly develop an area set aside by the Parish as wetlands. R. 75-93. Indeed, the impacts of the Facility detailed in the preceding Factual Background section were extensively put before the Council in Petitioners' appeal.

Following notice of that appeal, Koch submitted a new application for land use approval on September 22, 2023, to the Council for review. R. 191-371. This new application included updated information and several new documents not in its Planning Commission application, including (1) an argument as to why the proposed ethane pipeline is a "unique situation requiring location in wetlands," R. 198, (2) the quantities of hazardous substances on site that were omitted from its first application to the Planning Commission R. 233-236, and (3) the Environmental Assessment Statement submitted in support of its air permit to the LDEQ. R. 237-371.

The Council heard presentations from Petitioners and Koch at a public hearing on September 27, 2023. R. 521, 522. Petitioners discussed the points raised in their appeal about the impacts of the Project. During the public hearing component of the meeting, members of Petitioner organizations gave testimony detailing the impacts that industry and this Facility have had and would continue to have on their health and the environment. For example, Shamell Lavigne, vice-president of RISE St. James, detailed the extensive cancer-related risks associated with the Facility and underscored for the Council that "the parish council must protect us. We have had enough cancer." R. 547.

Koch employees also spoke during the public hearing to support Koch's application. R. 543-544. Petitioners made the point that no current Koch employees would lose their jobs if Koch's expansion application were denied. R. 548.

Members of the Council then expressed lengthy opinions about Koch and industry in general, including cursory statements that parroted back Koch's own verbiage, R. 560, but did not substantively grapple with the concerns raised by Petitioners. R. 565; 566. Wetlands were not mentioned at all. Instead, summary assertions were made that "Industry does the right thing," R. 555, and that "[i]f [the Parish Council] continue[s] to fight against industry every time industry comes to St. James Parish, then there won't be a St. James Parish." R. 559. Indeed, one Councilmember even asked of residents, "Why don't y'all buy the property to that [industry] can't locate?" R. 563.

Finally, the Council voted to reject Petitioners' appeal. R. 567-568; 572. The subsequently-published minutes from the meeting did not reflect any findings or reasons for decision. R 572.

On October 27, 2023, thirty days after the Council's final decision, Petitioners initiated the instant action by filing a Petition for Judicial Review before the 23rd Judicial District Court. The Record was filed on February 7, 2024.

ARGUMENT

I. The Planning Commission Violated the Parish's Land Use Ordinance When It Approved Koch's Application Without the Authority to Do So, Rendering the Action Void *Ab Initio*.

The Planning Commission acted outside the scope of its authority and directly violated a key procedural requirement of the Land Use Ordinance when it "approved" Koch's application instead of referring it to the Parish Council with a recommendation for its consideration as required by § 82-25(e). The Commission's violation of this requirement renders its approval of Koch's application null and void. *Folsom Rd. Civic Ass'n v. Par. of St. Tammany Through St. Tammany Par. Council*, 425 So.2d 1318, 1320 (La. App. 1 Cir. 1983) (while a "parish may have the discretion to approve or disapprove the plan itself," it has "no discretion in following the requirements of its own ordinance"); *Schmitt v. City of New Orleans*, 461 So.2d 574, 577-78 (La. App. 4 Cir. 1984), *writ denied*, 464 So.2d 318 (La. 1985), and *writ denied*, 464 So.2d 319 (La. 1985) (failure to refer proposed zoning changes to planning commission as required by state and parish law rendered ordinances "ipso facto void"); *Tardo v. Lafourche Par. Council*, 476 So.2d 997, 1001 (La. Ct. App. 1 Cir. 1985) (budget amendment invalid because it violated the procedural requirements of the parish's home rule charter mandating approval by parish president); *Davis v. Town of St. Gabriel*, 2001-0031, p. 2 (La. App. 1 Cir. 2/15/02); 809 So.2d 537, 539, *writ denied*, 2002-0771 (La. 10/14/02); 827 So.2d 420, and *writ denied*, 2002-0803 (La. 10/14/02); 827 So.2d 420 (agreement in derogation of state building permit requirements was an absolute nullity and variance issued based upon that agreement was unlawful and any construction pursuant to the invalid permit would be illegal); *NW St. Tammany Civic Ass'n v. St. Tammany Parish*, 2011-0461, 2011 WL 5410169 (La. App. 1 Cir. 11/9/11) (noting ruling in earlier proceedings that district court had ruled conditional use permit void *ab initio* because a traffic study had not been conducted as required by the local ordinance); *see also McMahon v. City of New Orleans*, 2018-0842, p. 5 (La. App. 4 Cir. 9/4/19); 280 So.3d 796, 800-01, *writ*

denied, 2019-01562 (La. 11/25/19); 283 So.3d 498 (traffic regulation passed in violation of home rule charter was “unlawful, invalid, and null and void *ab initio*, and was in reality no law and in legal contemplation is as if had never been passed.”) (internal quotations omitted).

As set out above, Koch’s proposed expansion included the construction of a pipeline and an access road through land designated as wetlands under § 82-25(c) of the Land Use Ordinance. Subsection (c) does not specifically list any allowable uses in Wetlands, requiring that “wetland areas *should remain unoccupied except for unique situations requiring a location in the water...*.” § 82-25(c) (emphasis added). Reinforcing the importance of these land use categories, § 82-25(e) of the Ordinance lays out a process to be followed in situations in which an applicant pursues uses that are not “allowable” under subsection (c) and would therefore be prohibited. In full, subsection (e) provides that:

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

§ 82-25(e) (emphasis added).

Thus, in order for Koch to “use” the wetland area in a way not intended or allowed for that particular category, subsection (e) required that the Planning Commission “consider” the use in accordance with the criteria set out in subsections (g)-(i), as well as make affirmative findings as to the considerations set out in subsection (e) regarding, *inter alia*, whether there is a compelling public benefit, compatibility with surrounding uses, and that any adverse impacts are “inconsequential.” Then, the Commission should have made a recommendation to the Parish Council. At that point, the Parish Council was supposed to make its own affirmative findings as to the considerations set out in subsection (e). This provision adds an additional layer of procedural protection to ensure fuller consideration of the serious implications and consequences of allowing otherwise prohibited uses on different categories of land, not least, ecologically sensitive areas like wetlands.

Instead, the Planning Commission took it upon itself to “approve” Koch’s application without referring it to the Parish Council for consideration and approval. R. 73. This action circumvented a key procedure required by the ordinance, and was *ultra vires* and outside the scope of the Commission’s authority, rendering its approval unlawful and *void ab initio*. Had it not been for Petitioners’ appeal of the Commission’s decision, the matter would not have gone before the Parish Council at all.

The Parish admits that the Commission, and not the Council, approved the application. Parish Ans. ¶ 11. It also admits that the Council merely denied Petitioners’ appeal and sustained the Commission’s decision—as opposed to considering and “approving” Koch’s application in accordance with the requirements of subsection (e). Parish Ans. at ¶¶ 11, 17. The Parish attempts to justify these omissions by arguing that subsection (f) of the Land Use Ordinance applied to Koch’s application, i.e., a provision that does not require Council approval. But by its own terms, subsection (f) only applies to uses of land that are *allowed* under subsection (c). Subsection (f) is intended as a limitation on subsection (d) that allows building permits to issue “as a matter of course” for uses that are “allowable” “within areas designated for each land use category.” Subsection (f) simply requires that when the proposed use is allowed on the land at issue but the proposal involves major residential, commercial or industrial development, the Planning Commission must be involved and approve the proposal, rather than have the land use permit be granted as a matter of course through the “parish’s customary building permit process” as envisioned in subsection (d). Even if subsection (f) also applied to uses not listed as allowable, which it does not, the upshot of the Parish’s position would mean that land use applications involving major commercial and industrial developments could receive *less* oversight and review than smaller projects. This would undermine the purpose of these provisions in particular and the purpose of a land use plan in general.

The Parish’s attempt to gloss over the clear requirements of the Ordinance, in particular where wetlands are concerned, fails. The Planning Commission violated § 82-25(e) when it acted beyond the scope of its authority and approved Koch’s application. As a result, the Commission’s approval is null and void, and must be treated as though it “had never been passed.” *McMahon*, 280 So.3d at 800-01. The Council’s cursory after-the-fact denial of

Petitioners’ appeal cannot save or revive the Commission’s approval.¹² This is particularly so since, as discussed more below, the Parish has admitted that the Council did not follow the procedure set out in subsection (e) and therefore did not consider the relevant criteria and make the affirmative findings required, which would render its decision arbitrary and capricious, even setting aside the initial illegality of the Commission’s action.

II. The Council violated Art. II, § 82-25(e) of the Land Use Ordinance and acted arbitrary and capriciously when it sustained the Commission’s approval of the Project without making the affirmative findings that there is a compelling public benefit, that the use is compatible with surrounding uses, and that adverse impacts of the use are inconsequential.

The Parish violated the Land Use Ordinance when it approved the Project’s ethane pipeline and access road in an area designated as a Wetlands land use without making the mandatory findings. Louisiana courts have found that where a Parish Council fails to properly make and document required findings in support of a permitting decision, the underlying permit decision must be revoked. *Oakville Cmty. Action Grp. v. Plaquemines Par. Council*, 2008-1286, p. 8 (La. App. 4 Cir. 2/18/09), 7 So.3d 25, 29-30, writ denied, 2009-0621 (La. 5/1/09), 6 So.3d 813. As noted above, the Land Use Ordinance dictates a procedure that the Parish must follow to approve “uses not listed as allowable uses.” Ord. Art. II, § 82-25(e). The Ordinance provides that “the parish council shall not approve a use[] under this subsection unless it *makes affirmative findings* that there is a compelling public benefit [and] that the use is compatible with surrounding uses and adverse impacts of the use are inconsequential” *Id.* (emphasis added).¹³

It is indisputable that Industrial uses are “not listed” as allowable uses in the Wetlands land use category. The Wetlands Use category in the Ordinance does not list any allowable uses:

Wetlands	Shown for information only; wetland areas should remain unoccupied except for unique situations requiring a location in the water, subject to any permits required under article V, chapter 18.
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Ord. Art. II, § 82-25(c) (excerpt of Wetlands category). Contrast this with the “Industrial” land use category, that provides a list of allowable uses:

Industrial	Petrochemical operations; manufacturing; tank farms; material processing and production; grain elevators, railroad yard facilities; raw, spent, and finished material
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¹² Additionally, the Council did not consider or make any findings about whether Koch’s pipeline constituted a “unique situation” requiring location in the water.

¹³ Nor can the Planning Commission recommend such a use without making these mandatory findings. See Ord. Art. II, § 82-25(e) (“*The planning commission shall not recommend a use for approval*, and the parish council shall not approve a use, under this subsection unless it makes affirmative findings that”) (emphasis added).

	storage; warehousing or open-yard equipment; material handling facilities (such as conveyors, pipelines, and trans-shipment facilities); and associated support facilities and offices.
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Ord. Art. II, § 82-25(c) (excerpt of Industrial category).

It is likewise undisputed that: 1) Koch’s pipeline and access road (indeed, its entire Project) is an industrial use, 2) that it is going in a Wetlands land use area, and 3) that the Council did not make the findings listed in § 82-25(e).¹⁴ The Parish did not make an affirmative finding for the Wetlands portion of the Project that there is a compelling public benefit, it did not make an affirmative finding that the use is compatible with surrounding uses, and it did not make an affirmative finding that adverse impacts of the use are inconsequential. It flatly violated the Ordinance.

As discussed in the preceding section, in its Answer, the Parish argued that it did not need to make the mandatory findings because the Planning Commission found the Wetlands portion of the Koch Project to be an allowable use. Parish Ans. p. 13 ¶ 55. For the reasons discussed above, the approval by the Planning Commission was *void ab initio*. The Planning Commission is not the proper entity to approve the pipeline, and its recommendation on a project falling under 82-25(e) does not obviate the need for the Council to make mandatory findings. The Ordinance expressly prohibits all uses “not specifically listed” unless the findings are made. Ord. Art. II, § 82-25(e). Again, it is indisputable that Koch’s industrial ethane pipeline is “not specifically listed” as an allowable use for Wetlands, and the Planning Commission did not find it to be specifically listed (nor could it). The Planning Commission’s finding that Koch’s proposed pipeline presented a unique situation that it could approve did not make it a use listed as an allowable use, and is therefore irrelevant to the need for the findings. The Council completely abdicated its duty under the Ordinance and acted arbitrarily and capriciously when it rubber stamped the Planning Commission’s improper land use approval. As in *Oakville*, “it is undisputed that the Council did not follow the law, and, thus, did not have authority to issue the . . . permit.” *Id.* at p. 9, 7 So.3d at 29. The permit must therefore be revoked on these grounds.

III. The Parish Council acted arbitrarily and capriciously when it did not apply, on the record, the mandated factors of the Ordinance to the Koch proposal.

In another reversible error, the Parish Council did not follow the mandatory procedures under § 82-25(h) of the Land Use Ordinance. The Ordinance divides the Parish into various land

¹⁴ Even the Planning Commission did not make these findings. *See* R. 72-74; Answer at p. 13 ¶ 57.

use categories. Ord. Art. II, § 82-25(a)(1). When an entity is seeking to develop within a land use category, the proposed project must fall within the specifically listed allowable uses for that category in order to be permitted as a “matter of course” under subsection (d) of the Land Use Ordinance. Ord. Art. II, § 82-25(d). However, even if a proposed use fits entirely within an allowable use under subsection (d), if the proposed commercial or industrial development requires a state air permit—as Koch’s Project indisputably does—the Commission, or the Parish Council on appeal, is required to undergo a more extensive review described under § 82-25(h) before it has the discretion to approve the permit.¹⁵ This additional review requires the Parish to consider five factors under subsection (h)(3) before it can approve a land use permit: 1) the physical impacts of a proposed project on the air, water and land; 2) the environmental impacts of a proposed project on the air, water, and land; 3) the public benefits of a proposed project; 4) whether those benefits are at least commensurate with the impacts; and 5) whether the environmental impacts may impair the ability of the parish to attract other beneficial development. Ord. Art. II, § 82-25(h)(3).¹⁶

This additional analysis is intended to serve the overall purpose of the Land Use Ordinance, articulated under Ord. Art. II, § 82-25(b), to ensure that citizens in St. James are benefitted when the Council makes land use decisions. Local governing authorities, as opposed to state permitting agencies, have unique and particularized knowledge of the risks their constituents face, and thus are best positioned to consider whether those risks pose too great a burden on the community to justify. When the (h)(3) factors are not adequately considered, this important function is lost.

¹⁵ § 82-25(f). “Notwithstanding subsection (d) of this section,” “[a]ny commercial or industrial development that requires a state or federal permit for air, water, solid waste, hazardous materials” “shall not be issued a building permit until approved by the planning commission (or by the parish council on appeal).” *Id.*; see also *Yolande Schexnayder & Son, Inc. v. Par. of St. James*, 21-416 (La. App. 5 Cir. 3/9/22), 337 So.3d 534, 542, writ denied, 2022-00587 (La. 6/1/22), 338 So.3d 491 (interpreting subsection (f) of the St. James Parish Land Use Ordinance as requiring Parish approval for any permitting of any property that requires other state or federal permits for its operation); see also Ord. Art. II, § 82-25(h), requiring consideration of the factors “for approval or denial of uses under subsection (f)”

¹⁶ Ord. Art. II, § 82-25(h) lists the factors as “(1) Whether the impacts of the proposed use would be substantially different from the impacts of allowable uses for the districts. Such impacts may include, but are not limited to, air and water emissions, noise, lighting, traffic (road and rail), effect on property values, and neighborhood; (2) The public benefits of the proposed use, such as job creation, expansion of the tax base, and enhancing the attractiveness of the parish for future development; (3) The physical and environmental impacts of the proposed use on the air, water, and land, with particular attention to whether the public benefits of the proposed use are commensurate with those impacts, and whether the environmental impacts may impair the ability of the parish to attract other beneficial development; (4) Vested property rights and other constitutional protections enjoyed by the proponent of the proposed use.”

In addition to the goal of protecting citizens, objective guidelines such as those outlined in § 82-25(h)(3) are designed to “prevent council members from making a decision on the basis of whim or caprice.” *Morton v. Jefferson Par. Council*, 419 So.2d 431, 435 (La. 1982); *see also Gaudet v. Econ. Super Mkt., Inc.*, 112 So.2d 720, 722 (La. 1959) (explaining that “municipal legislative bodies may reserve to themselves the power to grant or deny licenses or permits, ‘where they do so by an ordinance containing a rule or standard to govern them;’ since it is a fundamental rule . . . ‘that an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases, and that an ordinance is invalid where it leaves its interpretation, Administration or enforcement to the unbridled or ungoverned discretion, caprice or arbitrary action of the Municipal legislative body or of administrative bodies or officials.’”). A governing body does not have the authority to make a permitting decision without following the mandated procedures.¹⁷ This legal principle applies to reviewing councils: evidence that a body of government followed its own procedural rules must be supported by the record. For example, the Second Circuit Court of Appeal of Louisiana stated that:

From the record there appears to be no reasonable justification for the action by the ZBA and the City Council in failing to grant a variance to the plaintiff. The City argues in brief that during each proceeding the Board continually expressed concerns in approving the application based on rational, reasoned considerations of public health, welfare, and safety and after articulating valid land use considerations such as traffic impact, parking concerns and hours of operation. *Such an articulation does not appear in the record.*

Clark v. City of Shreveport, 26,638 (La. App. 2 Cir. 5/10/95), 655 So. 2d 617, 622.

In the present case, the Council failed to adhere to binding procedures. The Ordinance is clear about the factors that *shall* be considered by the *Council* before approving a land use permit on appeal. Ord. Art. II, § 82-25(h). Indeed, under 82-25(f), the Ordinance notes that “the following uses or activities shall not be issued a building permit until approved by the planning

¹⁷ *Oakville Cmty. Action Grp. v. Plaquemines Par. Council*, 2008-1286 (La. App. 4 Cir. 2/18/09), 7 So. 3d 25, 29, *writ denied*, 2009-0621 (La. 5/1/09), 6 So.3d 813; *see also Kaltenbaugh v. Bd. of Supervisors*, 2018-1085 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145, *writ denied sub nom. Kaltenbaugh v. Bd. of Supervisors, S. Univ.*, 2019-01871 (La. 1/28/20), 291 So.3d 1061 (holding that where the Southern University of New Orleans did not follow its own binding procedures, its decision was arbitrary and capricious, and not entitled to deference); *see also* La. Stat. Ann. § 49:978.1(G) (“The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court.”).

commission (*or by the parish council on appeal*)” (emphasis added). The Council had a duty to consider these factors on appeal. Moreover, although the Planning Commission considered some factors in its initial decision, for the reasons discussed in Part I, *supra*, those determinations were at most recommendations for Council consideration. Additionally, Koch submitted a new application in the time between the Commission’s initial findings and the Council’s review of Petitioners’ appeal. R. 191-371. That supplemental application contained substantial new information material to whether the Project met the required factors under 82-25(h)(3). Perhaps most critically, Koch included its entire Environmental Assessment Statement (“EAS”) submitted in support of its air permit to the LDEQ. R. 238-371. In Koch’s own words, this EAS was intended to demonstrate that the Project’s “social and economic benefits. . . outweigh any environmental impacts.” R. 192. This is precisely the question that must be answered under 82-25(h)(3). By the plain language of the Ordinance and because Koch replaced its first application with new information that was not before the Commission, the Council was under a duty to apply the factors under 82-25(h) to Koch’s permitting request.

Yet the record demonstrates that the Council did not fulfill this duty. Specifically, the Council did not consider whether the public benefits were at least commensurate to the environmental impacts of the proposed project before it made the decision to deny the appeal. R. 572. Nor did the Council evaluate the adequacy of the analysis done by the Planning Commission, which was precisely the issue brought forth by Petitioners in their original appeal. The record therefore shows that Council did not follow its own procedures (i.e., applying the factors mandated by the ordinance). Failure to follow such procedures is arbitrary and capricious under the law and is not afforded deference by courts. *See Kaltenbaugh v. Bd. of Supervisors*, 2018-1085 (La. App. 4 Cir. 10/23/19), 282 So.3d 1133, 1145, *writ denied sub nom. Kaltenbaugh v. Bd. of Supervisors, S. Univ.*, 2019-01871 (La. 1/28/20), 291 So.3d 1061. This Court should therefore reverse the Council’s decision to approve the Koch land use application.

A. The Parish failed to consider the physical and environmental impacts of the project.

Section (h)(3) of the Ordinance requires the Parish to consider “the physical and environmental impacts of the proposed use on the air, water, and land” before it approves a proposed project. Ord. Art. II, § 82-25(h)(3). Louisiana courts have found that governing bodies like parish councils comply with their own permitting ordinances when the meeting minutes reflect that the Council conducted a “thorough analysis” of a proposed project before voting to

approve it. *Herman v. City of New Orleans*, 2014-0891, p. 6-7 (La. App. 4 Cir. 1/21/15), 158 So.3d 911, 916, *writ denied*, 2015-0354 (La. 4/24/15), 169 So.3d 363. Whether a thorough analysis has been conducted is based on what Council members say about their reasoning. *Id.* For example, in *Herman v. City of New Orleans*, the court found that councilmembers had conducted a sufficiently thorough analysis when councilmembers affirmatively concluded that the project complied with zoning guidelines, where the record showed that the public bodies had provided two rounds of meaningful feedback to the developer seeking the permit, and where the record showed that approval was based on “proper review of all relevant design issues.” *Id.*

Unlike *Herman*, the record here does not show that the Council reviewed all relevant issues raised by Petitioners and community members. Instead, the Council was silent on many of the key issues about physical and environmental impacts. For example, Petitioners and members of the public asked the Council to consider impact to wetlands, and particularly their role as a flood management resource. R. 545. The Council did not mention the word “wetlands” once. Petitioners and members of the public raised concerns regarding Koch Methanol’s history of Clean Water Act violations and the risk associated with increased production on water quality. R. 82, 539. Again, the Council was silent on this issue. Petitioners and members of the public expressed their concern that the proposed project did not include an evacuation route. R. 530, 547. The Council did not mention “evacuation” once. Petitioners and members of the public expressed concerns about the impact associated with ammonia releases, R. 527, 545, and other toxic metals. R. 542. Once again, not a word from the Council on ammonia or toxic metals. Among the most troubling of the concerns raised by Petitioners and community members was the Parish Council’s pattern of consolidating pollution associated with industry in the Fifth District without considering the cumulative effects of that consolidation. R. 542. The Council did not acknowledge these concerns.

The pattern of silence on the topics that the Ordinance requires the Council to consider is not only a failure to conduct a “thorough” analysis, it is not an analysis at all. If the Council does not even mention the environmental and physical impacts raised for consideration, how could it demonstrate that it considered the level of risk associated with those impacts, and whether those risks, which were supported by substantiated evidence, could be justified by the modest benefits associated with the proposed project? The failure to respond to these concerns is particularly salient where, as here, members of the community have consistently pleaded for the Council to

take their concerns for the environment and their own health seriously.¹⁸ The Council's failure to consider the environmental and physical impacts in light of the Ordinance's mandate is an arbitrary and capricious action, and this Court should therefore reverse the Council's decision to approve the Koch land use application.

B. The Parish failed to consider whether the benefits of Koch's Project are commensurate with the impacts.

The ordinance also mandates the Council to consider "whether the public benefits of the proposed use are commensurate with those impacts." Ord. Art. II, § 82-25(h)(3). This language requires a balancing approach when the Parish Council is making land use decisions on appeal. The standard for this kind of approach to analyzing environmental impacts has been explored in the context of LDEQ permitting decisions. *See Save Ourselves, Inc. v. Louisiana Env't Control Comm'n*, 452 So. 2d 1152, 1157 (La. 1984). A balancing process sets forth a procedure in which environmental costs and benefits are given "full and careful consideration along with economic, social and other factors." *Id.* at 1157. The Louisiana Supreme Court also recognized that environmental implications will often be in conflict with economic and social considerations, and "[t]o consider the former along with the latter must involve a balancing process." *Id.*

Consistent with this approach, the Council must apply the factors outlined in (h)(3) for every qualifying project and reach the outcome that is consistent with the particular impacts and benefits that are attributable to that project based on the evidence brought before it throughout the adjudication process. *See* Ord. Art. II, § 82-25(e) (explaining that such decisions under (h) are made on a "case-by-case basis."). Part and parcel of the cost-benefit balance is that the Parish must also consider whether the community suffering the impacts of the project would realize the benefits. Here, the record does not reflect that the Council took this approach on appeal. The Council did not address how the public benefits it named measured relative to the environmental and physical impacts. R. 572. Nor did the Council make any mention of the Commission's analysis. And it did not reduce any part of its decision to writing, apart from the denial of Petitioners' appeal and its decision to uphold the Planning Commission's approval.

¹⁸ R. 549-50, Comments of Myrtle Felton, Inclusive Louisiana ("We have too much pollution already . . . And for y'all to sit up there like it don't mean nothing—it means a whole lot to me. And I just don't understand. Y'all know, y'all know what these chemicals are doing. You know. But you refuse, you just refuse to do anything about it . . . How many times do I have to get up here and say this? And it just—Lord, when? When are you all going to put people's health over profit?").

This failure to follow the Ordinance's mandate is another arbitrary and capricious action and thus reversible by this Court.

C. The Parish failed to consider whether the impacts of the Project would impair the Parish's ability to attract beneficial development.

Finally, in addition to a finding that the public benefits are commensurate with the environmental impacts, Ord. Art. II, § 82-25(h)(3) also requires that the Council consider "whether the environmental impacts [of Koch's Project] may impair the ability of the parish to attract other beneficial development" before approving the proposal. R. 572. The Council, considering a new and modified application from Koch, had a duty under (h)(3) to consider the impact of the proposed project on beneficial development. The record demonstrates that the Council did not do so.

The record demonstrates that the Koch facility immediately abuts an area designated as Residential Growth, and Petitioners raised concerns that the Project would harm the Parish's ability to attract residential development in this area. R. 8; 198. Indeed, there is a neighborhood on Barras Street to the southeast of the site and, according to Koch's application, there is a residential property within .36 miles of the production center of its site. R. 11; 26. Allowing a significant increase in harmful air emissions, a heightened risk of an accident that will release dangerous levels of pollutants, an additional pipeline that can rupture, and more rail traffic will impair the ability of the Parish to attract residents to this growth-designated area and may even make the quality of life of existing residents so unbearable as to force relocation. Yet the Council did not consider any of these impacts to beneficial residential development anywhere in the record.

The Planning Commission illegally undertook this analysis and found no impairment due to the project's location in an industrial area and its distance from potentially impacted uses. R. 101. There is no evidence in the record that the Council reconsidered the Commission's analysis or conducted its own "thorough" analysis based on the new information before it on appeal. This is all the more concerning given that, as previously discussed, Koch submitted a substantially modified application to the Council. The record therefore demonstrates that the Council did not consider whether the physical and environmental impacts of the Project will impair the Parish's ability to attract other beneficial development before it made the decision to approve the Project, a consideration that is mandatory under (h)(3). The Council's failure to consider these impacts

on beneficial development in light of the Ordinance's mandate is an arbitrary and capricious action and thus reversible by this Court.

IV. The Parish acted arbitrarily and capriciously when it relied on political considerations, irrelevant facts, and extra-legal reasoning that bore no relationship to Koch's land use proposal or to the consideration of factors mandated by the Ordinance to approve the Project.

To avoid arbitrary and capricious decision-making, the Council must apply the Ordinance and clearly balance the mandated factors in a manner that has a substantial relation to "the public health, safety, or general welfare." *Cuny Family, LLC v. Parish of Jefferson*, 19-269, p. 9 (La. App. 5 Cir. 12/26/19), 288 So.3d 235, 241. Although applying the factors and analyzing the impacts of each project is a case-by-case determination, courts have held that some articulations do not satisfy the arbitrary and capricious standard. Improper grounds include the decision-maker's reliance on personal feelings, experience or irrelevant facts instead of the substance of the request, *Christopher Estates, Inc. v. East Baton Rouge Parish*, 413 So.2d 1336, 1339-41 (La. App. 1 Cir. 1982), and political considerations, *Clark v. City of Shreveport*, 26,638, p. 4, p.11 (La. App. 2 Cir. 5/10/95), 655 So.2d 617, 619-620, 622.

A. The Council's reliance on improper considerations in its analysis, rather than public health and safety, constitute arbitrary and capricious decision-making.

Rather than grounding its decision in the health, safety, or general welfare of the public, as is required by an exercise of the Parish's police powers, the record demonstrates that the Council rooted its decision in personal feeling, experience, and irrelevant facts. In *Christopher Estates, Inc. v. East Baton Rouge Parish*, a developer challenged a planning commission's decision not to approve a revised subdivision plat. 413 So.2d 1336, 1337 (La. App. 1 Cir. 1982). The Louisiana First Circuit Court of Appeal determined that the Commission's rejection of the project was not related to the public safety, health, or general welfare where commission members' "disapproval was based on the bare, bottom-line recommendation of the staff, on opposition voiced by the residents of the subdivision, and on personal feelings and experience." *Id.* at 1339-1340. The court reasoned that these considerations "must be deemed marginal when compared to considerations such as public health and safety." *Id.* Thus, the court held that the commission acted arbitrarily and capriciously in reaching its decision because of "the absolute dearth of evidence in the record to show that the disapproval of the proposed plat was based on reasons relating to the public safety, health, or general welfare." *Id.*

Like in *Christopher Estates, Inc.*, councilmembers here relied on feelings and personal experience in reaching their determination to approve the land use decision. For instance, Councilman St. Pierre described his own experiences when assessing cancer risk, noting “Now, I hear about the cancer . . . I worked in one of the most dangerous plants there is up and down the river, Denka. . . I worked 37 years over there. God has been fortunate to me because I don't even take aspirin.” R. 554-555. He later emphasized: “I got where I am right now because of industry.” *Id.* Councilman St. Pierre did not explain how these personal anecdotes were relevant to his decision to approve the Koch expansion.

To the extent that the Council analyzed the physical impact of cancer in the community, Councilman St. Pierre cited his own medical history and that of his father as examples to disprove the scientific data presented by Petitioners. *Id.*¹⁹ These personal anecdote bore no relationship to Koch’s land use proposal and does not meet the Council’s responsibility under the Ordinance to balance the health impacts against the benefits of a given project.

Louisiana courts have also found that the political considerations of the parish’s governing bodies do not provide adequate justification for reaching land use or zoning decisions. *See, e.g. Clark v. City of Shreveport*, (La. App. 2 Cir. 5/10/95), 655 So. 2d 617, 619-20, 622 (upholding reversal of zoning decision where political considerations influenced the decision, especially where a legitimate articulation grounded in public health, welfare, and safety did “not appear in the record”).

The record here is similarly devoid of legitimate articulations grounded in public health, welfare, or safety. For instance, Councilman Cooper emphasized political compromise rather than substantively addressing the impacts on the community he represents. R. 561. Councilman Cooper admitted that “[i]f I could rubber stamp everything myself, there'd be a lot of changes, but I have to work with the council to get things approved so that we could have a majority vote to move forward.” R. at 561.

In fact, the Council ignored evidence that Koch has not lived up to its promises on jobs and has repeatedly violated its air permit. For instance, Petitioners presented evidence that out of Koch’s total workforce, only roughly 25% of employees consisted of St. James Parish residents. R. at 517. Additionally, the Council was also put on notice regarding Koch’s history of

¹⁹ Councilman St. Pierre added: “I have friends of mine that past[sic] that had cancer that lived on the boondocks and caught cancer. There's no chemicals out there.” R. 555.

noncompliance with the Clean Air Act, when presented with the information that the facility received a Warning Letter from LDEQ indicating that an inspection report noted areas of concern regarding the company's air violations. R. 82. The record further shows that Koch has also been subject to both formal and informal enforcement actions since it started methanol operations in 2021. R. 82. These harms are further supported by the oral hearing testimony of community members who voiced their concern for the potential health impacts associated with toxic air emissions created by Koch. When faced with the un rebutted evidence of environmental violations, the Council failed to analyze and weigh the threats that Koch's noncompliance poses to the community. Without addressing the evidence of violations, Councilman St. Pierre stated that "[when industry] do[es] the right things, okay, the right things are going to happen. . . . Industry does the right thing." R. 555. Councilman St. Pierre's statement illustrates a conclusion contrary to the substantiated evidence presented during the hearing, and a conclusion contrary to public health, safety, and welfare, thereby evidencing arbitrary and capricious action.

B. Had the Parish adequately performed the balancing analysis, the evidence in the record would not support a finding that the public benefits of the Project are commensurate with the environmental impacts.

The Council failed to perform a balancing analysis of the environmental impacts and public benefits as required by the Ordinance. Had the Council performed its mandatory duty, the evidence in the record would not support a finding that the public benefits are commensurate with the environmental impacts. The Council is obligated to conduct a thorough analysis of the mandated factors. *Herman v. City of New Orleans*, 2014-0891, p. 6-7 (La. App. 4 Cir. 1/21/15), 158 So.3d 911, 916, *writ denied*, 2015-0354 (La. 4/24/15), 169 So.3d 363. The Louisiana Supreme Court has held that the state constitution "requires a balancing process in which environmental costs and benefits must be given full and careful consideration along with economic, social and other factors." *Save Ourselves, Inc. v. Louisiana Env't Control Comm'n*, 452 So. 2d 1152, 1156-57 (La. 1984). The Louisiana Supreme Court further acknowledges that "[e]nvironmental amenities will often be in conflict with economic and social considerations. To consider the former along with the latter must involve a balancing process. In some instances environmental costs may outweigh economic and social benefits and in other instances they may not." *Id.* at 1157.

As previously examined, the environmental impacts posed by the Project are substantial. The Project would significantly increase emissions of nearly all criteria pollutants and more than

a dozen toxic air pollutants R. 80. These emissions have well-established health impacts that collectively include lung cancer, leukemia, respiratory disease, brain and nerve damage, kidney damage, and birth defects toxic metals. R. 80. Further, the Project would also substantially expand the permitted emissions of toxic heavy metals such as arsenic, barium, cadmium, chromium, cobalt, copper, manganese, mercury, nickel, and zinc. R. 182-183; 80-81. Koch has demonstrated a history of noncompliance with its environmental permits, resulting in both formal and informal enforcement actions against the facility. R. 82. Koch has repeatedly exceeded its ammonia limits in violation of its air permits. R. 82. Finally, Koch's Project would expand into territories zoned wetlands lying outside of the industrial zone. R. 8.

In contrast, the public benefits are minimal. Koch suggests that the Project has the potential to create two permanent jobs. R. 117. In addition to this number being significantly low, Councilman Bland further noted that when evaluating "promised jobs," that "[t]here is no promise. There's an estimate. Whenever you apply, it's an estimate." R. 560. Not only are these jobs not promised, but there is no guarantee that these positions will be filled by members of the community. The record suggests that only 25% of Koch Methanol's positions are filled by residents of St. James Parish. R. 517. Councilman St. Pierre stated that "[the job is] not just going to be given to you because you belong to St. James Parish. I'm sorry. It's the way it works." R. 558. Koch claims that it would also provide 400 construction jobs; however, those temporary positions would only exist during the five-year construction period, and it is impossible to estimate how many of these jobs would go to St. James Parish residents. R. 117.

Additionally, the tax benefits have also been drastically reduced. Koch applied for and received an industrial tax exemption (ITEP) from the Board of Commerce and Industry, exempting the company from paying more than \$7,000,000 in taxes for the project over the course of ten years (assuming renewal at five years). R. 387.

In comparing the environmental impacts against the public benefits in the record, it becomes clear that the harms posed by the expansion project significantly outweigh the negligible public benefits attributed to job creation and tax revenue. The Council attempted to generalize this project by arguing that industry "as a whole" is beneficial to the community because of an increase of tax dollars and employment opportunities, but the record casts doubt on the weight of these benefits. R. 558. Councilman Nash stated, "I can stand here and say, based on the process of the methanol plant, in[sic] any industry that comes in that's going to provide

sustainable income in the St. James Parish in revenues and taxes, I will support that.” R. 559. By this logic, every Industrial use would be automatically approved, rendering entirely useless every procedure the Ordinance requires. The Council’s complete disregard of the balancing analysis is in clear violation of the Ordinance. Here, had a thorough balancing of the impacts and benefits been completed, the evidence in the record would have supported a conclusion that the environmental impacts significantly outweighed the public benefits.

CONCLUSION

St. James Parish patently violated the letter and spirit of its own ordinance when granting land use approval to Koch Methanol St. James for the proposed Project. Because the approval was made outside the bounds of the Parish’s legal mandate, it is an absolute nullity. Additionally, and in the alternative, this Court must find that the manner in which the Parish exercised its discretion was arbitrary and capricious because in flagrant violation of the dictates of its own Land Use Ordinance. For the foregoing, Petitioners respectfully request that this Court vacate the Parish’s land use approval.

Respectfully submitted this 16th day of February, 2024, by:

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Certificate of Service

I hereby certify that I have, on this 16th day of February, 2024, served a copy of the foregoing to counsel for the defendant by email, as agreed to by counsel.

/s/ Lisa Jordan
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