

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

BEVERLY ALEXANDER, et al.

DOCKET NO. 41903

v.

ST. JAMES PARISH

DIVISION "B"

**ST. JAMES PARISH'S
BRIEF OPPOSING THIS APPEAL**

Respondent, St. James Parish (the "Parish"), provides this brief opposing the Petition for Judicial Review filed by Petitioners, Beverly Alexander, et al.

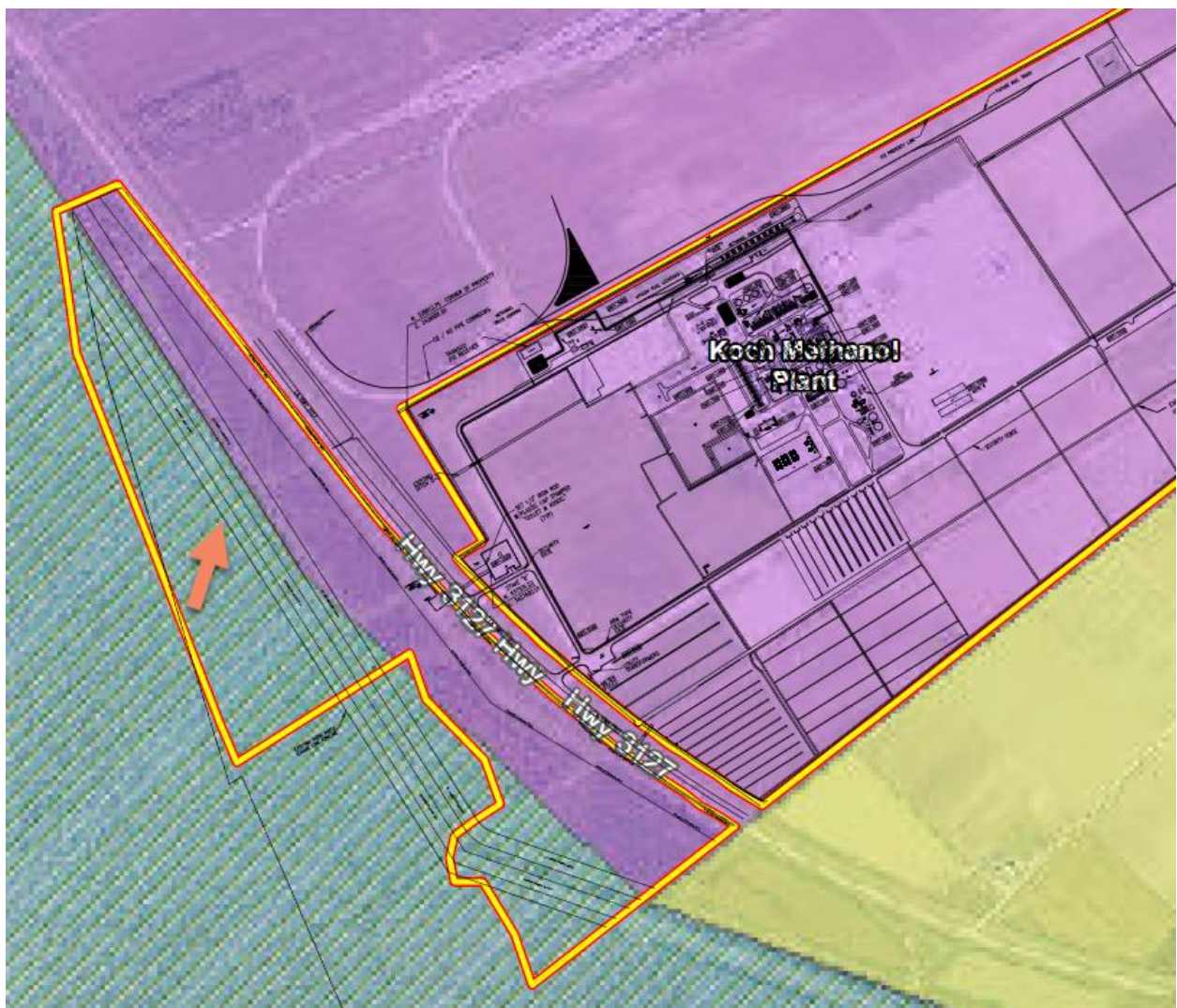
Introduction

This appeal pertains to a project proposed by Koch Methanol St. James, LLC at its existing methanol production plant on the west bank of St. James Parish at 5181 Wildcat Street in St. James. The site is bordered by St. James Co-op Road. The existing plant produces refined Grade AA methanol using natural gas as a feedstock. Construction of the plant was started several years ago under the auspices of Yuhuang Chemical Industries Inc. – typically called YCI. But over time, Koch Methanol acquired the plant, and now operates it. The proposal consists of two separate components:

- An optimization project designed to increase the plant's capacity to produce methanol by about 25% within the existing physical footprint of the plant primarily by optimizing existing plant equipment, and upgrading the feedstock to add ethane into the natural gas feed stream. This will require constructing an 8" underground ethane pipeline crossing under Highway 3127 to connect the plant to an existing ethane pipeline located in wetlands immediately southwest of the plant's site. Approximately 1,000 feet of this connecting pipeline would be located in wetlands.
- The second component is an oxygen back up supply. This aspect of the project would include oxygen storage tanks and equipment to vaporize oxygen prior to feeding into the plant. The oxygen back up supply is a reliability improvement aimed at reducing plant trips and downtime due to loss of the existing oxygen feed that is supplied from an existing on-site air separation unit feed.

For convenience, the proposed project, including both components, will be referred to in this brief as the “KMe Project.” See R. 007 through 023 and the figures cited therein for a more detailed description.

The project spans two designated land use areas. Most of the project is in an area designated as Industrial in the land use ordinance. A limited component of the project – the 1,000 feet of 8” ethane pipeline – is to be located in an area designated as Wetlands. These designated areas are illustrated in the following figure taken from R. 055. The area designated as Industrial in the land ordinance is shown in purple, while Wetlands are shown in green. The arrow in the left-hand side of the figure indicates where the ethane line will connect to an existing pipeline already located in the wetlands.



At issue in this appeal is how the KMe Project was considered and approved under the St. James Parish land use ordinance, codified at Sec. 82-25 of the St. James Parish Code of Ordinances. The ordinance governs the physical development of the parish, and sets out the parish’s policy for that development. A passage from Sec. 82-25(c) succinctly expresses what the land use ordinance is intended to accomplish:

The land use plan divides the parish into land use categories whose purposes are described in this section. These category descriptions

. . . shall be interpreted to control the general character and impacts of development so that the physical development within each use area is compatible with and beneficial to other uses within the same area.

Under the land use ordinance, the St. James Parish Planning Commission considered the project at its July 31, 2023 meeting. The commission received a presentation from representatives of Koch Methanol (R. 045-071), and opened the floor for public comment. Only one comment was offered, which was in favor of the KMe Project. See R. 072-074, minutes of the July 31, 2023 planning commission meeting. The commission unanimously approved the KMe Project, with certain conditions, via a resolution setting out those conditions and the rationale for the approval. R. 073-074.

Appellants in this proceeding appealed the planning commission's decision to the parish council, which heard the appeal at its September 27, 2023 meeting. After hearing presentations from the Appellants and Koch Methanol, and taking public comments, the parish council unanimously voted to reject the appeal. R. 570-573, minutes of the September 27, 2023 parish council meeting. This appeal ensued.

In the big picture, Appellants have two objections:

- First, that the ethane pipeline in the wetlands is a prohibited use under the land use ordinance and cannot be approved through the process utilized by the planning commission.
- Second, that the decision to approve the KMe Project struck the wrong balance of benefits against adverse impacts.

The first of Appellants' objections presents a legal issue; the second presents a question for which this Court is obliged to defer to the parish, absent a preponderance of the evidence showing by the Appellants that the decision was arbitrary and capricious.

Jurisdiction and Standard of Review

This Court has jurisdiction pursuant to La. Const. Art. V, § 16(B), under the "as provided by law" prong the jurisdiction of Louisiana District Courts. The "provided by law" component is supplied by the St. James land use ordinance, which allows an appeal to the District Court by persons aggrieved by decisions of the parish council. See Sec. 82-25(m)(6).

Stripped to its essentials, this appeal presents two conceptually different issues for appellate review:

- The first is whether the 1,000 feet of 8” pipe to be located in the wetlands requires the parish to apply the heightened level of scrutiny in considering the project for approval. This presents an interpretation of the language of the ordinance and is a question of law.
- The second depends somewhat on the first: whether the decision of the planning commission had a rational basis, both as to whether the pipe is a “unique situation” so as to be an allowable use and the balancing of the approval considerations stated in Sec. 82-25(h) of the land use ordinance for the overall approval of the KMe Project.

Regarding the first, legal issue, the Court examines the ordinance under well-established rule of construction that would apply to the interpretation of any legislation. Regarding the second issue, this Court is obliged to defer to the parish’s decision unless it “bears no substantial relationship to public health, safety or welfare as to render it arbitrary and capricious.” *Bourbon Country Estates, Inc. v. St. James Parish*, 611 So. 2d 180, 182 (La. App. 5 Cir. 1992).

There is an absence of codal guidance about how District Courts are to handle appeals in the procedural posture of this action. And the jurisprudential guidance is muddled (and often contradictory). Several cases refer to the Court’s review on appeal as “de novo.” See, e.g., *Palermo Land Co., Inc. v. Planning Commission of Calcasieu Parish*, 561 So. 2d 482, 492 (La. 1990); *Toups v. City of Shreveport*, 2010-1559 (La. 3/15/11), 60 So. 3d 1215, 1217; *Truitt v. West Feliciana Parish Government*, 2019-0808 (La. App. 1st Cir. 2/21/20), 299 So. 3d 100, 103. However, these cases do not define what they mean by a “de novo” proceeding. It is clear that they do not mean that the Court deals with the appeal as an ordinary proceeding, which would involve discovery and taking evidence in a trial. It is also clear that “de novo” does not mean that the Court should substitute its judgment for that of the parish officials.

In the context of these decisions, characterizing an appeal as a “de novo” proceeding refers to examining *the result* of the decision under review to determine whether it is arbitrary or capricious, but without being bound by the findings of an appellate level below. See *Palermo*, 561 So. 2d at 492 (emphasis in the original). An appeal of a land use decision “is not an appeal from the decision of a lower tribunal wherein the court scrutinizes the record below to test the accuracy of the City's decision; rather it is a de novo proceeding which tests whether the result of the City’s legislation . . . is arbitrary.” *Hernandez v. City of Lafayette*, 399 So.2d 1179, 1182 (La. Ct. App.1981),

writ denied, 401 So.2d 1192 (La. 1981), cited with approval in *Palermo*, 561 So. 2d at 492.

Moving beyond the confusion induced by the awkward reference to de novo proceedings, *Bourbon Country Estates*, 611 So. 2d at 182 provides a concise summary of the standard of review applicable here:

land use is subject to the police power of various governing bodies, and the courts will not interfere with the decisions of those bodies unless it is plain that their action is without any relation to the public health, safety or general welfare, *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659 (La.1975).

Stated differently, the question is whether a decision by the governing authority bears so little relation to public health, safety or welfare as to render it arbitrary and capricious, *Palermo Land Co. v. Planning Commission of Calcasieu Parish*, 561 So.2d 482 (La.1990). Further, the burden of proof is on the plaintiff to establish that the authority has acted arbitrarily, and if upon consideration of the evidence the propriety of the authority's action remains debatable, then that action will be upheld by the courts, *Palermo Land Co., supra*.

Appellants' have "the burden to establish by a preponderance of the evidence that the decision . . . has no substantial relationship to public health, safety, morals, or general welfare of the municipality." *Toups v. City of Shreveport*, 2010-1559, p. 4 (La. 3/15/11); 60 So.3d 1215, 1218

It is worthwhile noting what this appeal is not. It is not a judicial review under La. R.S. 33:4780.40, which pertains to parochial zoning ordinances enacted under Louisiana's zoning enabling statutes. Here, St. James Parish's land use ordinance was not enacted under state zoning statutes. Rather, it was enacted under the parish's home rule charter. See Ord. No. 14-03 (April 2, 2014).¹ Likewise, this is not a judicial review from a decision of a board of adjustment under La. R.S. 33:4780.47. St. James Parish does not have a board of adjustment. See Code of Ordinances Sec. 82-25(l).

Finally, this is not an appeal under the Louisiana Administrative Procedures Act ("APA") at La. R.S. 49:964(G), recodified in 2022 as La. R.S. 49:987.1. Some local land use cases incorrectly cite the APA as the proper source for the standard of appellate review. See, e.g., *Our Lady of Lake Roman Catholic Church, Mandeville v. City of Mandeville, Planning & Zoning Comm'n*, 2013-0837, p. 5 (La. App. 1 Cir. 2/3/14); 147

¹ Although the St. James Parish land use ordinance is not a zoning ordinance, it functions similarly to a traditional zoning ordinance in some respects, and most of the legal principles addressed in zoning jurisprudence are generally applicable to the land use ordinance at issue here.

So.3d 186, 189. However, the APA does not apply to political subdivisions by virtue of the definition of “Agency” in La. R.S. 49:951(3): “except . . . any political subdivision.” This exception was added in 1979 by Acts 1979, No. 578. The jurisprudence was slow to pick up on this exception, and continued to cite the APA standard of review for decades after political subdivisions were dropped from its coverage. See, e.g., in 2021, *New Cingular Wireless, PCS, LLC v. City-Par. of E. Baton Rouge*, 2021-0292, p. 6 (La. App. 1 Cir. 12/30/21); 340 So.3d 1037, 1043.

While jurisprudence from these statutory appeal proceedings may offer guidance, those proceedings are designed for different situations, and cannot be authoritatively applied to the instant appeal without considering their statutory context.

Background on the St. James Parish Land Use Ordinance

The fundamental purpose of the St. James Parish land use ordinance is expressed in the preamble to the original enactment of the ordinance in 2014: to guide the long-term development of St. James Parish. Ord. No. 14-03, April 2, 2014. Taken as a whole, the ordinance sets up a three-tier system, each with a different levels of scrutiny that apply when considering a project. Which tier applies depends on the characteristics of the project, its location, and what the land use map specifies for that location

First tier is the least demanding. It applies when a proposed project complies with the use designated for that area: a residential use in a Residential Growth area, or an industry in an area designated as Industrial. Approval is handled administratively as a matter of course through the building permit system. Secs. 82-25(c) and (d)

The second tier piggy-backs on the first. When a project is large enough (e.g., three acres or more), or requires certain state or federal permits, the project is subject to additional scrutiny under Sec. 82-25(f), even if it is expressly allowed as a use in an appropriately designated area. The logic behind this is that even though a project may be appropriate for its location, the size or nature of the project may entail impacts that need to be examined and, where necessary, tempered to the circumstances with approval condition. Projects in this second tier cannot be approved administratively through the building permit system. Instead, they are elevated to the planning commission for an approval. This second-tier scrutiny was applied to the KMe Project.

The third tier applies where a project is prohibited in its location by virtue of the allowable uses set out in Sec. 82-25(c). This tier is the most demanding. It requires a more extensive public vetting and approval process in which the planning commission does not have the power to approve the project. Instead, the planning commission merely makes a recommendation to the parish council, which alone has the authority to approve or deny a project under Sec. 82-25(e) when it would otherwise be prohibited under the ordinance. This third tier imposes additional scrutiny over and above that required for the second tier under Sec. 82-25(f). The land use ordinance prohibits approving a project that falls into this third tier unless it can satisfy one or more of three specific criteria for which both the planning commission and the parish council are required to make 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 rights superior to the land use ordinance.

When viewed overall, the land use ordinance is designed to make it easy to approve uses that are consistent with the land use plan, and thereby encourage the development of such uses. Conversely, for uses that are inconsistent with the plan, the approval process is more stringent, and inherently discourages such uses, all in an effort to achieve an overall compatibility of development patterns, as stated in Sec. 82-25(c).

The KMe project is fully consistent with the land use plan. It is exactly what the plan is designed to promote: industrial development in a designated Industrial area, remote from residential neighborhoods and with minimal adverse impacts. The KMe Project has the added benefit of being confined almost exclusively to the footprint of the existing methanol plant. This underscores the fact that job creation and retention benefits, along with growing the parish tax base, can take place without industry intruding further into agricultural and residential areas in St. James Parish.

A major aspect of this appeal boils down to whether the second tier of land use scrutiny under Sec. 82-25(f), or the third tier of scrutiny under Sec. 82-25(e) applies to the KMe Project. The Parish contends that it was properly considered as a second-tier project under Sec. 82-25(f).

**As a Matter of Law, Sec. 82-25(e) Does Not Apply;
the Proper Section for Consideration is 82-25(f)**

The threshold legal question presented by this appeal is this: Did the planning commission properly “slot” its approval under 82-25(f) (the second tier of the ordinance) rather than the more restrict Section 82-25(e)? Resolving this question depends on whether the short 1,000’ stretch of 8” ethane pipeline crossing though wetlands triggers the application of Sec. 82-25(e) in lieu of the more lenient 82-25(f). The structure of the land use ordinance makes it clear that Sec. 82-25(e) does not apply, and that the planning commission properly considered the KMe Project under Sec. 82-25(f).

The plain text of the ordinance demonstrates that the pipeline connection in the wetlands is an “allowable use” under the land use ordinance. “When a statute is clear and unambiguous and the application of the statute does not lead to absurd consequences, the statute must be applied as written.” *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.

Walking through the text of the ordinance starts with the basic principle in the land use ordinance: “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.” Sec. 82-25(e). As noted above, the question of whether the entirety of the KMe Project an allowable use turns on whether the 1,000 feet of 8” ethane pipeline is “allowable in a use category in subsection (c),” The pinpointed relevant provision of subsection (c) is Sec. 82-25(c)(11) in a chart in the ordinance, In relevant part, it reads as follows:

Land Use Category	Allowable Uses
[11.] Wetlands ²	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.

Sec. 82-25(c)(11) admonishes that wetlands *should* be left undisturbed. This is not mandatory; it is aspirational. Further, this provision provides an exception to the admonition that wetlands should remain undisturbed: “unique situations requiring a

² The codified version of the land use ordinance on Municode omits the number “11” (and all numbering) from the text of the land use categories chart, even though the source ordinances as enacted utilize the numbering. See Ord. No. 14-03 (April 2, 2014) and Ord. No. 17-21 (February 21, 2018).

location in the water.” That language appears in the column labeled “Allowable Uses”. Logically, the exception – a unique situation requiring a location in the water – is an “Allowable Use” under the land use ordinance by virtue of appearing in the “Allowable Use” column in Sec. 82-25(c). As such, it is subject to either the first-tier approval as a matter of course provision in Sec. 82-25(d), or the enhanced, second tier review process under Sec. 82-25(f). Because the pipeline (and the project as a whole) requires state and federal permits, its consideration is elevated to the second tier under Sec. 82-25(f).

Appellants want this Court to read only the first part of Sec. 82-25(c)(11) (“wetland areas should remain unoccupied”) while ignoring the balance of the provision recognizing that “unique situations requiring a location in the water” are allowable uses. Here, the ethane supply pipeline is in the wetlands. The only way to connect to a pipeline located in the wetlands is to go through wetlands; there is no other practical way to make the connection. This physical reality provides a rational basis for the planning commission’s determination that the 1,000 feet of connecting ethane pipeline is a “unique situation requiring a location in the water.”

When read in full and in context, Sec. 82-25(c)(11) allows limited uses in the wetlands, “subject to any permits required under article V, chapter 18,” which is a reference to the Coastal Zone Resource Management Program.. This was the planning commission’s interpretation, and they made a specific finding in that regard at R. 073:

WHEREAS, the commission also received an explanation from its counsel as to how the land use ordinance applied to the application, and the decision-making criteria therein. Counsel also addressed the allowability of the ethane pipeline connection depicted in the Application being located an area designated as Wetlands in the land use plan, such pipeline connection being a unique situation requiring a location in a Wetlands area because the existing ethane pipeline to which the connection will be made is already located in the Wetlands area, in accordance with ordinance Section 82-25(c)(11). The commission concurs that the pipeline connection is an allowable land use in the Wetlands in this circumstance.

By denying Appellants’ initial appeal, the parish council interpreted Sec. 82-25(c)(11) the same way as did the planning commission. This is significant in that the parish council is the ultimate legislative authority of the parish. While they do not interpret the law in a jurisprudential sense, they have to consider its application on a daily basis, and are in the best position to understand and act on what their own ordinances mean.

**The Planning Commission Made a Reasonable
Decision, Fully Supported by Evidence in the Record**

The KMe Project is not large by industrial development standards in St. James Parish, but the benefits are real which the adverse impacts are minor in comparison to other industrial facilities in St. James Parish, notwithstanding Appellants’ sensationalizing the environmental impacts.

The real benefits include construction jobs, new permanent jobs, retained permanent jobs, sales and use taxes, and property taxes. Against these benefits, Appellants are pushing a false narrative that this project is merely another in a long line of cancer-inducing industries that are deteriorating the parish’s air quality. The reality – reflected in the record – is that there is no dispute that air quality has been improving in

Additional Considerations

In addition to considering EJSscreen data, LDEQ evaluated whether individual permitting decisions have, over time, corresponded to increased emissions of criteria pollutants, TAPs, and/or Toxics Release Inventory (TRI)-listed chemicals from the facilities located in St. James Parish. LDEQ compared 2000, 2010, and 2015 ERIC and TRI data to corresponding 2022 values.³⁰

Metric	Percent Change (relative to 2000)	Percent Change (relative to 2010)	Percent Change (relative to 2015)
Criteria	-63.0	-57.8	-29.7
TAPs	-65.1	-60.6	-69.0
TRI ³¹	-49.3	-47.6	-27.9

The results show substantial and continuing declines in actual emissions of pollutants over the timeframes evaluated.

St. James Parish. This is shown by the following table taken from R. 512:

These data show that pollution levels in 2022 are anywhere from 49.3% to 65.1% lower than in 2000.

Plaintiffs contend that the KMe’s Project toxic pollutant emissions are such a danger to the public that the project should have been denied. The record resoundingly refutes this sensationalized assertion. A comparison of the projected toxic air emission standards to the regulatory standards shows that the KMe emissions comply with the air quality standards by huge margins, as illustrated by the following tables found at R. 068 and 069:

Table D-10: Comparison of Maximum Off-Property Carcinogenic Air Toxic Annual			
Chemical	Maximum Annual Average Air Concentration ($\mu\text{g}/\text{m}^3$)	Louisiana Ambient Air Standard - Annual Average ($\mu\text{g}/\text{m}^3$)	Louisiana Ambient Air Standard - 8 Hour Average ($\mu\text{g}/\text{m}^3$)
Acetaldehyde	0.00085	46	NA
Other Aldehydes	0.0028	46	NA
Arsenic	0.00001	0.02	NA
Benzene	0.00039	12	NA
Cobalt	0.00001	NA	NA
1,4-Dichlorobenzene	0.00001	NA	1,430
DPM	0.0065	NA	NA
Ethylbenzene	0.00019	NA	10,300
Formaldehyde	0.0054	7.7	NA
Naphthalene	0.00002	NA	1,190
Nickel	0.00002	0.21	NA
Notes:			
NA = not available			
$\mu\text{g}/\text{m}^3$ = microgram per cubic meter			
LDEQ = Louisiana Department of Environmental Quality (LDEQ 2013)			
References:			
LDEQ. 2013. Title 33 Environmental Quality. Table 51.2. Louisiana Toxic Air Pollutant Ambient Air Standards. May.			

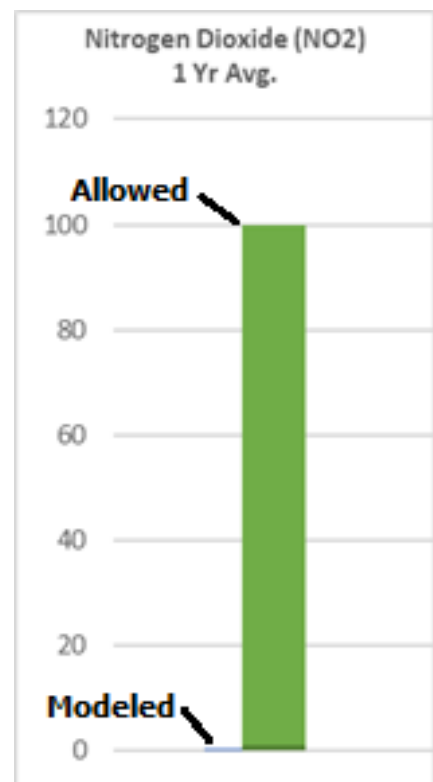
Table D-12: Comparison of Maximum Off-Facility Annual Average Noncarcinogenic Air Toxics Concentrations to Louisiana Ambient Air Standards		
Chemical	Maximum Annual Average Air Concentration ($\mu\text{g}/\text{m}^3$)	Louisiana Ambient Air Standard – 8 Hour Average ($\mu\text{g}/\text{m}^3$)
Ammonia	1.2	640
Barium	0.00004	12
Hydrogen sulfide	1.7	330
Manganese	<0.00001	4.8
Mercury	<0.00001	1.2
Methanol	40	6,240
n-Hexane	0.0081	4,190
Toluene	0.00044	8,900
Notes:		
NA = not available		
$\mu\text{g}/\text{m}^3$ = microgram per cubic meter		
LDEQ = Louisiana Department of Environmental Quality (LDEQ 2013)		
References:		
LDEQ. 2013. Title 33 Environmental Quality. Table 51.2. Louisiana Toxic Air Pollutant Ambient Air Standards. May.		

One central fact is undisputed: the KMe Project will not violate any ambient air standards. The air emission data presented throughout the process shows that the KMe Project will be below any and all regulatory air emission limits. To draw attention away from this compelling fact, Appellants bear down on the one measurement that

comes close to an air quality standard, but still complies: the NO_x 1-hour limit. KMe's air modelling shows that the KMe Project will push this one-hour measurement to 182.4 µg/m³, which is only slightly below the 188 µg/m³.

But it is important to put this in perspective. First, the 182.4 µg/m³ level is not the KMe Project's emissions only. It is the *combination* of the modelled KMe Project facility impacts, the impact of nearby sources (such as Formosa and Nucor), as well as background concentration. By itself, the background concentration makes up over 39% of the KMe number. (56.4 µg/m³ out of 182.4 µg/m³). See R. 067.

A second consideration comes from a related NO_x measurement, the one-year, annual average standard. KMe's modelling shows that the annual standard is easily satisfied by a wide margin. See the illustration provided at R. 062, and reproduced here (with explanatory annotations).



Based on the undisputed record, the KMe project will satisfy the NO_x air quality standard by a wide margin over the course of the year. While it may come close for an hour, per the one-hour standard modelling, it will still satisfy the standard. The fact that the KMe Project fully meets air standards supports the planning commission's approval and mandates denial of this appeal.

The notion that the environmental impacts are minor is also illustrated by the comparison of NO_x emissions from KMe to the emissions from Formosa (the yet-to-be constructed "Sunshine Project") and Nucor at R. 375:

- KMe's NO_x 1-hour emission of 182.4 µg/m³ is only 43% of Formosa's projected 422 µg/m³
- KMe is only 14% of Nucor's 1,263 µg/m³

These numbers illustrate that the KMe project is small in comparison to other existing and proposed industrial projects in St. James Parish. The numbers are also location-specific: they are estimated for the particular plants involved, and do not

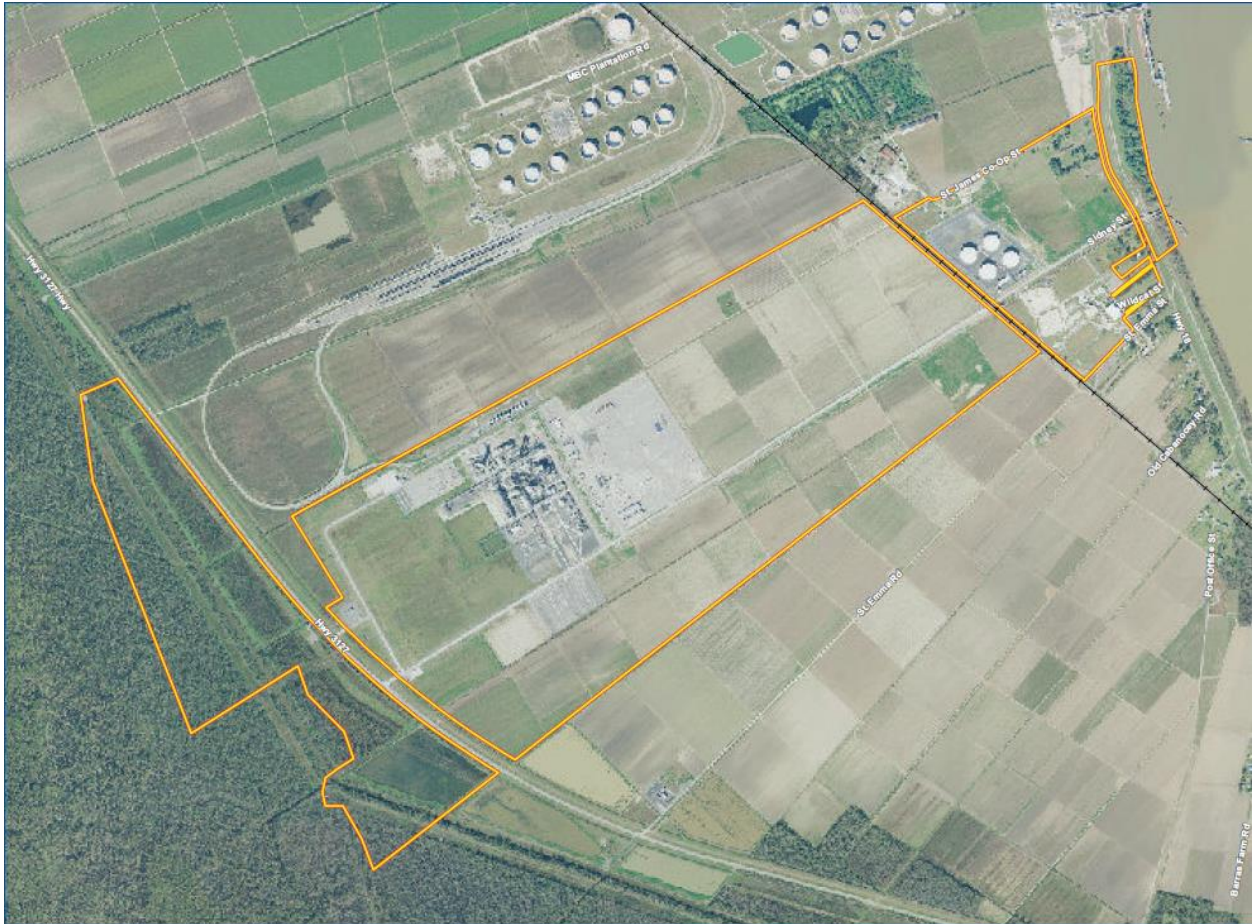
represent the air quality of the parish as a whole. Yet the Appellants attempt to sound alarm bells by arguing that the Parish is in danger of becoming a “nonattainment” area:

The Parish Council should consider that Koch Methanol’s Automation and Optimization Project may push St. James Parish into nonattainment for nitrogen dioxide (NO₂). . . . Nonattainment in St. James Parish would have serious repercussions, potentially including expensive upgrades of existing facilities and prohibitive permitting requirements for new industrial projects. Three independent analyses by industrial companies have found evidence that St. James Parish is near or above the nonattainment threshold for NO_x.

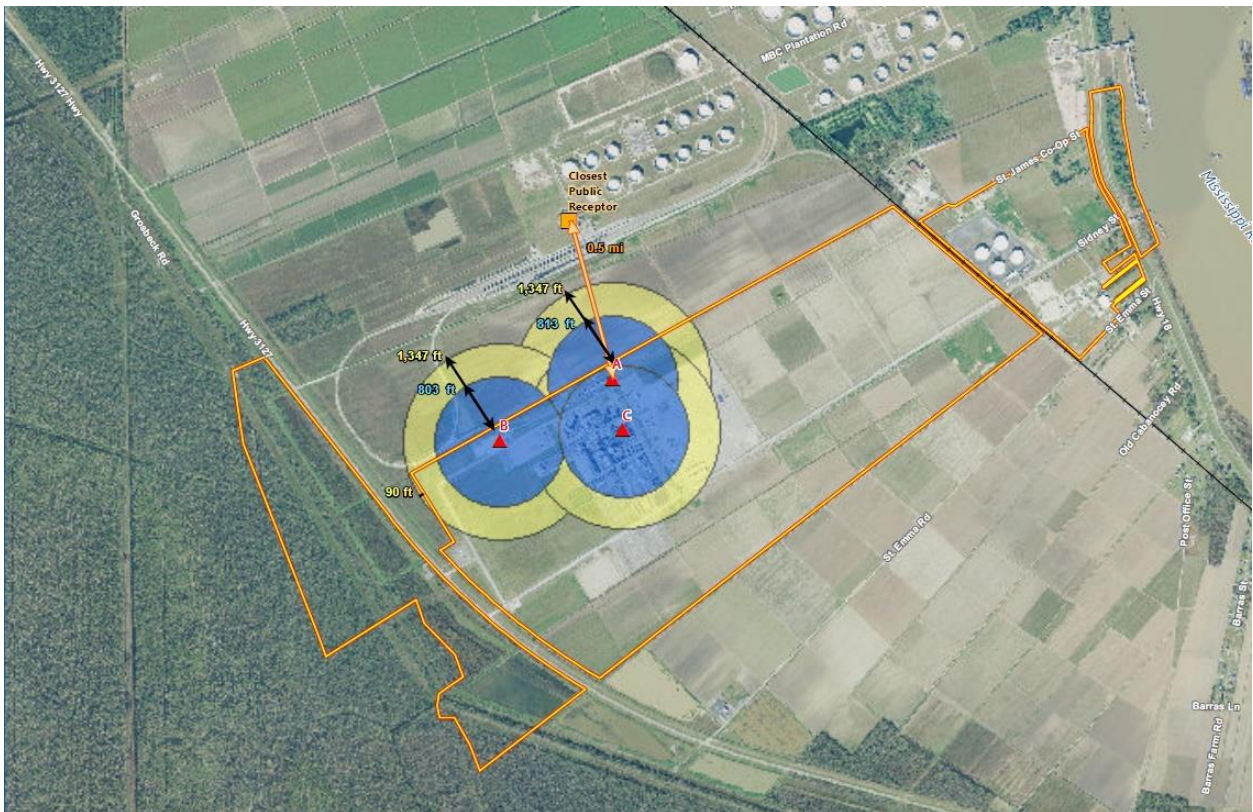
R. 374-375. The problem with this argument is that it is mere speculation about future conditions. In contrast, the KMe modelling indicates that the parish is not, and will not be, a nonattainment area because the air quality standards will be satisfied. Had the modelling indicated that St. James Parish would become a nonattainment area, it the Parish would very likely have factored that into its approval process.

Ultimately, Appellants’ nonattainment argument is a red herring. The air permitting system set up by EPA and LDEQ is designed so that new facilities will not violate ambient air quality standards, and facilities that would push St. James Parish over that threshold would not be approved. While the risk of nonattainment is always a concern for the Parish, it does not undercut the KMe Project decision here because the Parish will remain in an attainment status once the KMe Project is operations.

Appellants highlight their concerns about air emissions without acknowledging an important component of air quality: people. Appellants do not recognize how far away the KMe project is from occupied communities. Reference to the aerial view of the site from R. 028 on the next page shows how remote the location is. And for further evidence of how remote the KMe Project is from populated areas, see R. 030 and 032, which illustrate how the KMe Project is located to the extreme southwest portion of the site, well away from even the sparsely inhabited areas of River Road.



Another factor that proves the minimal risk of adverse impacts from environmental releases is KMe’s worst case failure scenario, depicted in R. 034 (shown below) and explained at R. 016-017.



The impact radii are mostly contained within KMe’s property line. To the extent they go beyond the property boundary, they extend to the northwest to cover

railway tracks, which are not anywhere near occupied areas. This illustrates the rational basis and soundness of the land use ordinance and the decision to approve the KMe Project. The adverse impacts are physically separated from residential areas, which allows industrial development to go forward without adversely impacting other uses.

Beginning at p. 16, Appellants' brief criticizes the parish council for not making "on the record" findings to describe how they evaluated the KMe project. While such an on the record recitation of the council's reasoning would make a tidier approval package, it is not a requirement of the ordinance, nor is it a requirement of state law or applicable jurisprudence. Neither the planning commission nor the parish council are legally obliged to explain every jot and tittle of their reasoning. Nevertheless, the planning commission summarized its reasoning in its approval resolution. R. 073-074. The planning commission considered the factors mandated in Sec. 82-25(h), and the resolution approving the KMe Project expressly said so:

BE IT FURTHER RESOLVED that the planning commission finds that approval is appropriate under ordinance Section 82-25, with specific reference to the factors described in Section 82-25(h) because: the impacts of the proposed use are common to industrial plants and would not be substantially different from the impacts of other allowable uses industrial areas; the project would retain existing jobs while providing new job opportunities, and would expand the tax base with the value of additional facilities. Such benefits outweigh the relatively modest physical and environmental impacts without impairing the parish's ability to attract other beneficial development by virtue of the project's location in an industrial area and its distance from potentially impacted uses.

R. 073. The record is replete with facts to substantiate the planning commission's consideration articulated in the resolution above. This supports the reasonableness of the planning commission's decision, and underscores that the Appellants cannot make the requisite showing that the decision was arbitrary or capricious, leave alone make that showing by a preponderance of the evidence, as required by *Toups*, 60 So.3d at 1218.

Public decision-making on land use matters is not a sterile process in which members of the planning commission and parish council mechanically check off elements of evidence. They bring to the table their own lived experiences and personal knowledge that they may draw upon when making zoning decisions, even if that knowledge and experience arises outside of the hearing process:

Considering appellants' contention the reasonableness of the ordinance must be adjudged solely in the light of the evidence

adduced before the enacting authority, we find that the hearings required are designed solely to afford interested parties an opportunity to be heard before the governing authority makes a decision under its police power which by its nature will affect private property rights and values. No provision of our law requires the proceedings of such hearings be recorded nor have appellants cited any statutory regulation prohibiting the governing authority from considering evidence, testimony or information obtained outside such hearings by personal investigation. Neither are we aware of any prohibition against the members of the governing authority resorting to their individual knowledge and experience in making decisions in such matters. How, when and where the local authorities gain knowledge of the subject matter is of no concern to the courts. What is said at the required public hearings is not necessarily the criteria of reasonableness when an ordinance of such nature is attacked as being arbitrary or discriminatory. The test to be applied is whether it is in fact arbitrary, unreasonable and discriminatory in the light of all attending circumstances. We hold, therefore, our esteemed brother below property concluded evidence other than that adduced at the public hearing was admissible for the purpose of determining the validity of the ordinance in question.

Meyers v. City of Baton Rouge, 185 So.2d 278, 282–83 (La. Ct. App. 1966). Such experiences were articulated by several parish council members in their remarks delivered in the council meeting immediately before their vote to unanimously reject the Appellants' initial appeal. See R. 554-567.

Conclusion

In the final analysis, this is a simple case. It is clear that Appellants fundamentally disagree with the parish's decision. But they have not satisfied the burden of proving by a preponderance of the evidence that the challenged decision was arbitrary or capricious. The fact that they do not like the decision and would have made a different one does not make the parish's decision wrong. It is simply different from how they would have decided it.

Local governments are afforded a wide range of discretion in land use decisions. St. James Parish has established a procedure by which those decisions are made. The land use ordinance allocates the decision-making power to the planning commission in the first instance, then to parish council on appeal. Appellants clearly have a different viewpoint than the individuals on the planning commission and the parish council who unanimously concluded that the KMe application should be approved. If they want that different viewpoint to prevail, they need to get appointed to the planning commission or elected to the parish council. See *State ex rel. Civello v. City of New*

Orleans, 154 La. 271, 97 So. 440 (1923) (“If they are not satisfying to a majority of the citizens, their recourse is to the ballot – not the courts.”). They cannot legally leverage the intercession of this Court to impose their differing viewpoint on the people elected and appointed to make this decision.

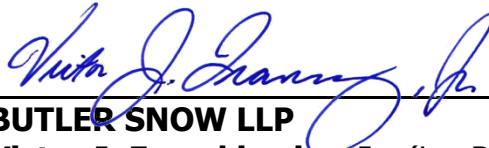
At each step of the decision process, public officials must make judgement calls that consider the benefits of a project balanced against its adverse impacts. Courts are not allowed to substitute the judicial branch’s judgment for that of the local authorities as to how that balance is struck. This Court’s role is limited. Its task is to ask a simple question: did the local authorities have a rational basis for their decision. Clearly they did, and the decision should be affirmed.

Appellants appear to view industrial development – any industrial development – as inherently bad. There is nothing wrong with that stance as a matter of opinion, but it is not the public policy of St. James Parish, as implemented through its land use ordinance. The ordinance reflects a balance of considerations that allow, and sometimes even encourage, industrial development in controlled circumstances at appropriate locations.

The public officials of St. James Parish have to consider tax revenue to support the delivery of services to the public, to educate them, to care for the elderly, and to employ people so that they can support their families. Appellants enjoy the luxury of not having to deal with these realities, and their position shows it. Appellants’ arguments do not recognize – or at best, trivialize – the benefits of job creation, job retention, and tax revenue to the general public welfare. While Appellants are free to disagree with how the planning commission and the parish council unanimously weighed these factors in approving the KMe project, they are not at liberty to reverse that decision because they have not shown it to be arbitrary or capricious.

For the foregoing reasons, this appeal should be denied.

Respectfully submitted, this the 8th day of March, 2024.



BUTLER SNOW LLP
Victor J. Franckiewicz, Jr. (La. Bar #22373)
201 St. Charles Ave., Suite 2700
New Orleans, LA 70170
(504) 299-7700 Phone
(504) 299-7701 Fax
vic.franckiewicz@butlersnow.com

ATTORNEY FOR ST. JAMES PARISH

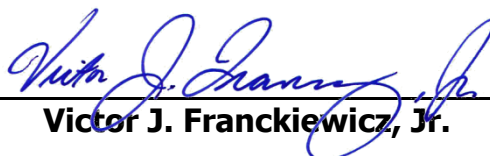
Certificate of Service

I certify that I served a true and correct copy of the foregoing on the following counsel of record at the addressed stated below by email on this the 8th day of March, 2024:

Lisa W. Jordan (lwjordan@tulane.edu)
Clara Potter (cpotter2@tulane.edu)
Charlotte Phillips (cphillips@tulane.edu)
Andrea Wright (awright15@tulane.edu)
Tulane Environmental Law Clinic
6329 Freret Street, Suite 130
New Orleans, LA 70118
Counsel for Ms. Beverly Alexander and RISE St. James

Pamela C. Spees (pspees@ccrjustice.org)
Center for Constitutional Rights
666 Broadway, 7th floor
New York, NY 10012
Counsel for Inclusive Louisiana and Mt. Triumph Baptist Church

Neil Abramson (nabramson@liskow.com)
Greg L. Johnson (gljohnson@liskow.com)
James L. Breaux (jlbreaux@liskow.com)
Clare M. Bienvenu (cbienvenu@liskow.com)
Liskow & Lewis, APLC
701 Poydras Street, Suite 5000
New Orleans, LA 70139-5099
Counsel for Koch Methanol St. James, LLC, Intervenor



Victor J. Franckiewicz, Jr.