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August 31, 2021

VIA U.S. MAIL

Honorable Becky Patin
St. Martin Parish Clerk of Court
P.O. Box 308
St. Martinville, Louisiana 70582

***RE: St. Martin Parish Government vs. Billy Broussard, ET AL.
16th Judicial District Court, St. Martin Parish, Docket No. 90830***

Dear Sir or Madam,

Enclosed please find an original and one (1) copy of a *Pretrial Memorandum on Behalf of St. Martin Parish Government and a Witness and Exhibit List* to be filed into the above referenced matter after first presenting to the appropriate Judge for review and approval. Thereafter, please return a stamped copy to my office for my records and have the parties served as indicated.

The enclosed is submitted on behalf of the St. Martin Parish Government, a political subdivision of the State of Louisiana. Therefore, no advance court cost is required pursuant to the provisions of Louisiana Revised Statute 13:4521.

Thank you for your attention in this matter. Should you have any questions or concerns, please do not hesitate to contact this office.

Sincerely,



Lee C. Durio
L.A. Bar Roll: 37453

LCD/cp

Cc:// St. Martin Parish Government via email; and

Honorable Judge Suzanne Demahy via email; and
Michael Adley via email.

ST. MARTIN PARISH GOVERNMENT

:16TH JUDICIAL DISTRICT COURT

VERSUS

: DOCKET NO. 90830

BILLY BROUSSARD ET AL.

: ST. MARTIN PARISH, LOUISIANA

PRETRIAL MEMORANDUM SUBMITTED ON BEHALF OF ST. MARTIN PARISH GOVERNMENT

MAY IT PLEASE THE COURT:

This Pre-Trial Memorandum is submitted on behalf of Petitioner, **ST. MARTIN PARISH GOVERNMENT**, hereafter referred to as "**THE PARISH**", on their Petition for Injunctive Relief filed on August 19, 2021. This matter is set for a hearing before the Honorable Suzanne Demahy, at the St. Martin Parish Courthouse on September 14, 2021 at 1:00 p.m.

PROCEDURAL HISTORY AND FACTS

This matter came before the Court when the Parish filed a Petition for Injunctive Relief on August 19, 2021. Defendant, **BILLY BROUSSARD**, is the owner of a tract of land bearing municipal address of 1775 Duchamp Road Broussard, Louisiana 70518, located in St. Martin Parish, Louisiana. The tract of land located at 1775 Duchamp Road Broussard, Louisiana 70518 is currently being used as a commercial dumpsite by the Defendant, **BILLY BROUSSARD**, where the Defendant, **BILLY BROUSSARD**, hauls loads of discarded trees trucks, limbs, and other vegetation for storage. The Defendant, **BILLY BROUSSARD**, also allows other businesses to dump tree vegetation on the property for profit. The storage of discarded trees trucks, limbs, and other vegetation reflects junk and a nuisance as defined by the St. Martin Parish Code of Ordinances.

The property is also being used a commercial mushroom farm owned by the Defendant per his own admission. **BILLY BROUSSARD** is the owner of **BILLY BROUSSARD FARM AND LAND DEVELOPMENT, LLC** a limited liability company licensed to do business in the State of Louisiana and **BROUSSARD COMPANIES, LLC** a limited liability company licensed to do business in the State of Louisiana. He is also the owner of a full-service tree business which operates inside and outside of St. Martin Parish, Louisiana.

It is believed that the Defendant, **BILLY BROUSSARD**, is using the above referenced companies to conduct commercial activity on the property at issue in this suit. The property in question is currently zoned as (R-2) Mixed Residential by the St. Martin Parish Code of Ordinances. The hauling, dumping, and burning of discarded tree logs, trunks, limbs, and vegetation do not fall within any permitted uses for property zoned as (R-2) Mixed Residential

pursuant to the St. Martin Parish Code of Ordinances. This activity is considered commercial in nature. The operations of a commercial mushroom farm do not fall within any permitted uses for property zoned as (R-2) Mixed Residential pursuant to the St. Martin Parish Code of Ordinances. This activity is also considered commercial in nature. The Defendants have not attempted to change the zoning of the area or request a zoning variance of the zoning ordinances. Instead has continued to operate a commercial venture in a residential area. The Defendants have no permit to operate a commercial operation in this area of St. Martin Parish.

St. Martin Parish Government sent a Cease-and-Desist Letter to Defendant, **BILLY BROUSSARD**, on or about July 21, 2021, through undersigned counsel (see attached as Exhibit "A"). However, the Defendant's in this matter have failed to comply and continually violate the zoning and nuisance ordinances of St. Martin Parish.

On or about August 3, 2021, at the regular meeting of the St. Martin Parish Council Summary No. 1329-OR was introduced by Councilwoman Carla JeanBatiste which was an ordinance to amend Article I of Chapter 26 of the Code of Ordinances for St. Martin Parish, Louisiana by the enactment of Section 26-10, all relative to the prohibition of dumping and/or burning of specified substances and providing for penalties for a violation thereof. The proposed ordinance was voted on by the duly elected members of the St. Martin Parish Council and passed on August 3, 2021. It was signed into law on August 4, 2021 by Parish President Chester Cedars.

Ordinance No. 21-08-1329-OR located in Section 26-10 of the St. Martin Parish Code of Ordinances section (B) provides:

"Except as otherwise provided in Paragraph C, no person, partnership, firm, association, corporation, limited liability company, or entity shall, within the incorporated areas of St. Martin Parish, Louisiana, transport or have transported for the purpose of storage, dumping, or other deposits onto any property in the unincorporated of St. Martin Parish, any building or construction material, brush, limbs, trees, leaves, tires, trash, or any other refuse or abandoned items or materials whatsoever. Moreover, no such items or materials shall thereafter be burned or cause to be burned by either person, firm, or entity transporting same of by the persons, firm, or entity have custody or control of the premise to which the said items or materials have been transported. Further, the Parish of St. Martin hereby deems such activities to be a nuisance and unlawful."

Due to the above-described condition of the property it has become a not only a nuisance to residents of the Parish, but also is consistently violating the zoning ordinances of St. Martin Parish. Due to Defendant's repeated failure to maintain the property pursuant to the St. Martin Parish Code of Ordinances and continuing violations of the Parish's zoning ordinances, Petitioner was forced to institute this litigation.

LAW AND ANALYSIS

In accordance with Article VI Section 17 of the Louisiana Constitution local governments are granted the unrestrictive rights to enact zoning ordinances which provides in pertinent part:

“Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.”

Furthermore, La. R.S. 33:4780.33 provides in pertinent part:

“For the purpose of promoting the health, safety, morals, or general welfare of the community, the governing authorities of parishes, other than the parishes of Rapides, Jefferson, Sabine, and Webster, or their duly created boards of adjustment are hereby authorized to regulate and restrict the height, number of stories, and size of structures; the percentage of lots that may be occupied; courts and other open spaces; the density of population; and the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes.”

There is no doubt that the St. Marin Parish Government is authorized to enact such ordinances and land regulations. The Parish may utilize injunctive relief to abate a violation of a zoning ordinance. The Jurisprudence of this state has routinely recognized the use of injunctive relief to enforce its land use regulations. *See City of Baton Rouge vs. Causey, 380 So. 2d 136 (La. App. 1 Cir. 12/27/79), writ denied, 383 So. 2d 24 (La. 1980).*

It is a necessity for the Court to understand and be aware of the St. Martin Parish Code of Ordinances applicable to their request. The St. Martin Parish Code of Ordinances Section 24 *et. seq.*, provides in part the following:

Sec. 24-1. - Definitions.

Junk means any inoperative, discarded or abandoned machinery, equipment, furniture, household appliances or other such manufactured items of any kind; or any discarded or abandoned metal, plastics, wood or other inanimate objects of any kind; or parts thereof, which may be treated or prepared so as to be used again in some form.

Nuisance means any condition of or the use of any premises or structure which:

(1) Causes diminution in the value of the property of others in the neighborhood or vicinity in which such premises or building is located; or

(2) *Reflects the storage or abandonment of trash, debris, junk, wrecked, or used automobiles or motor vehicles, or any parts thereof, or any junk, discarded, or abandoned machinery, or other metal, tin, or discarded items; or*

(3) *Is in any way dangerous to the health and safety of others.*

Sec. 24-64. - "Lot" defined.

The term "lot" as used in this article shall mean any lot, portions of lots or other property improved or unimproved, located within a residential area, whether or not the residential area is a dedicated subdivision.

Sec. 24-65. - Applicable jurisdiction.

The geographical land area affected by this article is hereby defined as all unincorporated areas of the parish. Article IV, pertaining to weed control in residential areas, and article V, pertaining to salvage and scrap materials, shall be enforced in "clearly established residential areas on state highways and parish roads" in addition to recognized subdivisions in St. Martin Parish.

Sec. 24-66. - Prohibited on occupied property or abutting sidewalks or neutral grounds.

(a) *No tenant or occupant of any leased or occupied lot, place or area shall permit any noxious weeds, grass or deleterious, unhealthy or noxious growths, over 12 inches in height, to grow or stand on any lot, place or area leased or occupied by said person, or on any abutting sidewalk or neutral ground.*

(b) *In dedicated subdivisions, all lots shall be maintained at a height not to exceed one foot, whether occupied or unoccupied.*

St. Martin Parish Code of Ordinances Article XVII, Appendix A Permitted uses for this area (R-2) are:

"Single-family dwellings (1 per lot); parish parks and playgrounds and facilities in conjunction therewith; libraries; museums; churches; public schools; private schools (except business and trade schools); private recreational uses; private gardens; private nurseries; private garages; home occupations; accessory uses; fire and police stations; single mobile homes (1 per lot); duplexes (1 per lot); and mobile home subdivisions (lots for sale)."

Ordinance No. 21-08-1329-OR located in Section 26-10 of the St. Martin Parish Code of Ordinances section (B) provides:

“Except as otherwise provided in Paragraph C, no person, partnership, firm, association, corporation, limited liability company, or entity shall, within the incorporated areas of St. Martin Parish, Louisiana, transport or have transported for the purpose of storage, dumping, or other deposits onto any property in the unincorporated of St. Martin Parish, any building or construction material, brush, limbs, trees, leaves, tires, trash, or any other refuse or abandoned items or materials whatsoever. Moreover, no such items or materials shall thereafter be burned or cause to be burned by either person, firm, or entity transporting same of by the persons, firm, or entity have custody or control of the premise to which the said items or materials have been transported. Further, the Parish of St. Martin hereby deems such activities to be a nuisance and unlawful.”

The St. Martin Parish Government will prove that the property subject to this suit is a lot within a residential area of St. Martin Parish, located in a dedicated subdivision, not being maintained pursuant to the St. Martin Parish Code of Ordinances above. This property harbors Junk meeting the definitions of the St. Martin Parish Code of Ordinance. In that the property owner hauls and store trees vegetation, logs, and trunks on the property for storage. The storing of the tree material and the burning of the tree material causes an eyesore to the area meeting the definition of a nuisance.

Further, the property at issue is clearly zoned as R-2, residential, which prohibits the above referenced commercial activity. As stated in the St. Martin Parish Code of Ordances Article XVII, Appendix permitted used for this tract of land does not include any commercial or business activity and commercial activity is strictly prohibited. The Parish will prove that the Defendant operates a tree service in the Parish of St. Martin and uses this tract of land as a dump site for discarded tree material.

Ordinance No. 21-08-1329-OR located in Section 26-10 of the St. Martin Parish Code of Ordinances section (B) strictly prohibits the action of the Defendant and his companies from transporting or have transported for the purpose of storage, dumping, or other deposits onto any property in the unincorporated of St. Martin Parish, any building or construction material, brush, limbs, trees, leaves, tires, trash, or any other refuse or abandoned items or materials whatsoever.

Since the Defendant is in violation of multiple parish ordinances, the Parish is entitled to a preliminary injunction and in due course a permanent injunction enjoining Defendant property owner from violating the above ordinances and ordering he maintain the property in accordance with the same.

Generally, under Louisiana Code of Civil Procedure Article 3601, to prevail on a petition for a preliminary injunction, the petitioner is required to establish by prima facie evidence that:

1. It will suffer irreparable injury, loss, or damage if the injunction is not issued;
2. It is entitled to the relief sought; and
3. It will likely prevail on the merits of the case.

However, the law also provides **when a defendant obstructs plaintiff in the enjoyment of a real right, the latter may be entitled to a prohibitory injunction restraining the disturbance and also to a mandatory injunction for the removal of the obstruction or to undo what has been illegally done.** *Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa*, 04-0270, pp. 6-7 (La. App. 1st Cir. 3/24/05), 906 So. 2d 660, 664. It is well-settled that it is unnecessary for a party seeking an injunction to allege or prove irreparable injury if the threatened action is a direct violation of prohibitory law. *Louisiana Associated General Contractors, Inc. v. Calcasieu Parish School Board*, 586 So.2d 1354 (La.1991).

In this case the Defendant property owner is in violation of the St. Martin Parish Code of Ordinances, more specifically Chapter 24 and St. Martin Parish Zoning Ordinances as referenced above, which is a direct violation of prohibitory law. Since the Defendant property owner is in a direct violation of the Parish Code of Ordinances, or a matter of prohibitory law, the Parish need not show any irreparable injury or harm.

Therefore, the Parish, submits that the facts that will be proven and introduced at the trial of this matter will unequivocally demonstrate that the Defendant property owner engaged in unlawful conduct on the property referenced above. Thus, upon the establishment of a prima facie case of such prohibitory conduct, a preliminary injunction must be granted without having to prove irreparable harm or injury.

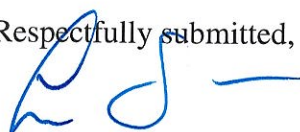
CONCLUSION

The facts of this case will show that Defendant property owners are in violation of the St. Martin Parish Code of Ordinances, specifically Chapter 24 regarding nuisances, and multiple zoning ordinances by storing discarded tree material on the property and operating a business on

the property. Injunctive relief must be granted in this matter to prohibit the Defendant property owner to continue to violate a prohibitory law. Accordingly, the Parish request that this Honorable Court grant the instant motion for preliminarily injunction, enjoining and restraining the Defendant property owner from further violating the St. Martin Parish Code of Ordinances.

All cost should be accessed towards the Defendant.

Respectfully submitted,



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leedurio@duriolaw.com
Attorney for St. Martin Parish Government

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon all counsel of record by either electronic mail, facsimile and/or by placing same in the United States mail, properly addressed and postage prepaid, this 31st day of August, 2021.



Lee C. Durio

Lee C. Durio Attorney at Law

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June 21, 2021

VIA U.S. CERTIFIED MAIL # 7018 0360 0000 4862 1578 AND U.S. REGULAR MAIL

Billy Broussard
1307 South Main Street
Breaux Bridge, Louisiana 70517

RE: CEASE and DESIST for activity on the property located on Duchamp Road.

Dear Mr. Broussard:

The undersigned counsel has been retained by St. Martin Parish Government in reference to you and your business conducting farming and or other commercial activities on property located on Duchamp Road in St. Martin Parish, Louisiana.

St. Martin Parish Government has learned by not only self-admission, but after an investigation that you are using the property for a commercial mushroom farm and as a dump site for discarded cut down logs and tree limbs from your tree service business.

The property in question is currently zoned as (R-2) Mixed Residential. Permitted uses for this area is: Single-family dwellings (1 per lot); parish parks and playgrounds and facilities in conjunction therewith; libraries; museums; churches; public schools; private schools (except business and trade schools); private recreational uses; private gardens; private nurseries; private garages; home occupations; accessory uses; fire and police stations; single mobile homes (1 per lot); duplexes (1 per lot); and mobile home subdivisions (lots for sale) (see St. Martin Parish Code of Ordinances Article XVII, Appendix A).

Mushroom farming and the dumping of discarded logs and tree limbs do not fall within any permitted uses for property zoned as (R-2) Mixed Residential pursuant to the St. Martin Parish Code of Ordinances. This activity is considered agricultural and commercial in nature.

Please consider this correspondence an immediate **CEASE and DESIST** of any farming, agricultural, dumpsite, and commercial activity on the property located on Duchamp Road, St. Martin Parish, Louisiana.



Should this activity continue St. Martin Parish Government is prepared to institute litigation to enjoin you from continuing this activity.

Thank you for your attention in this matter. Should you have any questions or concerns please do not hesitate to contact his office.

Sincerely,



Lee C. Durio
L.A. Bar Roll: 37453

LCD/cp



ST. MARTIN PARISH GOVERNMENT :16TH JUDICIAL DISTRICT COURT
VERSUS : DOCKET NO. 90830
BILLY BROUSSARD ET AL. : ST. MARTIN PARISH, LOUISIANA

WITNESS AND EXHIBIT LIST

NOW INTO COURT, through undersigned counsel comes the, **ST. MARTIN PARISH GOVERNMENT**, who files this Witness & Exhibit list as follows:

A. WITNESS LIST

The following witnesses **MAY** be called at the trial of this matter.

1. Ronald Solarie, Parish Employee;
2. Scott Lopez, Witness;
3. Blake Dubroc; Witness;
4. Evan Mautrin; Witness
5. Brooke Gillespie; Parish Clerk of Council;
6. Any named Defendant;
7. Any and all parties or witnesses listed by any other party;
8. Any witnesses that may be necessary in rebuttal to Plaintiff's witnesses.

Petitioners, reserves the right to amend and/or supplement this witness list as discovery continues.

B. EXHIBIT LIST

The following exhibits **MAY** be introduced at the trial of this matter as either in direct or rebuttal evidence:

1. Any exhibits filed in the lawsuit, Court records, or attached to pleadings;
2. Demand Letters Sent by the Parish;
3. Photographs of the property and commercial activity;
4. Nuisance complaints;
5. Copies of zoning road documentation;
6. Louisiana Secretary of State Information;
7. Copies of St. Martin Parish Code of Ordinances;
8. Correspondence from Defendant; and
9. Any documents provided by the Defendant.

Petitioner reserves the right to amend and/or supplement this exhibit list as discovery continues.

C. ESTIMATED LENGTH OF TIME OF TRIAL

It is estimated that it will take one to two hours.

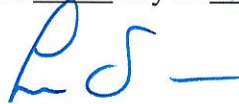
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served upon all counsel of record by either electronic mail, facsimile and/or by placing same in the United States mail, properly addressed and postage prepaid, this 31st day of August, 2021.



Lee C. Durio