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**16TH JUDICIAL DISTRICT COURT FOR THE PARISH OF LAFAYETTE**
**STATE OF LOUISIANA**

**NO. 90,830** **DIVISION: B**

**ST. MARTIN PARISH GOVERNMENT**

**v.**

**BILLY BROUSSARD ET AL.**

**FILED:** _____ _____
**DEPUTY CLERK**

**PRE-TRIAL MEMORANDUM**

MAY IT PLEASE THE COURT:

Defendants, herein, BILLY BROUSSARD, BILLY BROUSSARD FARM AND LAND DEVELOPMENT, LLC, and BROUSSARD COMPANIES, LLC,[1] respectfully submit this Pre-Trial Memorandum in response to the "Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunctive Relief" filed on behalf of St. Martin Parish Government ("SMPG"). For the reasons contained herein, the petition should be denied/dismissed.

**Background**

Billy Broussard is a resident of St. Martin Parish, Louisiana. He is the manager of Billy Broussard Farm and Land Development, LLC ("Billy Broussard Farm and Land"). Billy Broussard Farm and Land owns the tract of land bearing the municipal address 1675 Duchamp Road Broussard, Louisiana 70518 ("1675 Duchamp Road")—not 1775 as identified in the "Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunctive Relief."

1675 Duchamp Road is an expansive 35-acre property. Before Billy Broussard Farm and Land purchased the property it was overgrown and served as a haven for drug users. Drug abusers slept in tents spread out all across the property. The property was both an eyesore and a danger. Billy Broussard Farm and Land cleaned the property, raising the surrounding property values in the process. It is no longer a drug haven. Rather, it is now used to privately grow mushrooms.

Billy Broussard learned about the vast environmental benefits of growing mushrooms and has been experimenting with new methods for growth at 1675 Duchamp Road. If his experiments prove successful, Billy Broussard hopes to one day associate with local schools so that Four-H and agricultural clubs can learn from his experimental mushroom practices.

[1] Broussard Companies, LLC does not conduct any business. It is unrelated to the present dispute.

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Billy Broussard also owns a tree cutting service. The tree cutting service is not located at or operated out of 1675 Duchamp Road. Billy Broussard does occasionally use tree and vegetative debris from his tree cutting service to feed the mushrooms he is privately growing at 1675 Duchamp Road.

Neither Billy Broussard nor Billy Broussard Farm and Land are violating any purported zoning ordinances at 1675 Duchamp Road. Nonetheless, SMPG has been on a crusade to interfere with Billy Broussard's use of 1675 Duchamp Road. SMPG claims 1675 Duchamp Road is zoned R-2 (Mixed Residential). Zone R-2 permits privately growing mushrooms as it allows private recreational use, private gardens, and private nurseries. SMPG, however, continues to harass Billy Broussard with allegations that he is conducting impermissible commercial activities on the property.

Perhaps in recognition that privately growing mushrooms would not violate its purported zoning ordinance, SMPG recently passed Ordinance No. 21-08-1329-OR which appears to be targeting Billy Broussard and Billy Broussard Farm and Land. The ordinance prohibits Billy Broussard Billy Broussard Farm and Land from placing any tree or vegetative debris on his own property, regardless of the use, upon penalty of fine or imprisonment if the tree or vegetative debris did not originate on land owned by Billy Broussard or Billy Broussard Farm and Land. Other residents of St. Martin Parish who would be affected by this ordinance told Billy Broussard they were advised by local officials that the ordinance would not be enforced against them.

SMPG has now instituted this suit seeking to enjoin Defendants from use of 1675 Duchamp Road. For the reasons contained herein, this petition should be denied/dismissed.

## Law and Argument

### I. The Zoning Ordinance is Unconstitutionally Vague and Ambiguous

SMPG seeks to enjoin Defendants pursuant to an unconstitutional zoning ordinance. St. Martin Parish is zoned by the division of the parish into various zoning, use districts. The zoning ordinance refers to a map to define the boundaries of the use districts:

> Section 2. Zoning district map (defined)
>
> The boundaries of the said districts are as defined in the Zoning District Identification File (Public Road Zoning Data File) which has been properly attested and placed on file in the office of the St. Martin Parish Clerk of Court. This Zoning District Identification File, together with all maps, notations, references, and other information thereon, is made part of this ordinance and has the same force and effect as if fully set forth or described herein.

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Upon inquiry with the St. Martin Parish Clerk of Court, however, no "Zoning District Identification File" or "Zoning District Map" exists in the Clerk of Court's office. Because zoning ordinances are "in derogation of an owner's rights,"[2] courts have insisted on a level of formality in enacting zoning ordinances.[3] As one court explained, in enacting zoning ordinances "[m]inimally every property owner is entitled to know with precision in which one of [the] districts his property has been placed."[4] Accordingly, courts have routinely invalidated/found unenforceable zoning ordinances when the "zoning map" referenced in the ordinance is not on file, non-existent or unclear.[5]

For example, in *Newton County v. East Georgia Land and Development Company*, a developer challenged Newton County's May 21, 1985 zoning ordinance. The developer argued it was void because "the zoning ordinance at issue refers to—and purports to incorporate by reference—a set of maps identified in the ordinance as the 'Official Zoning District Maps for Newtown County.' "[6] There was nothing in the record, however, to show those maps existed at the time of enactment.[7] Newton County tried to argue the ordinance was valid because it later adopted a zoning map that appeared in the record.[8] The court rejected Newton County's argument, explaining the ordinance was void on the date of enactment and could not be revived/cured simply by later adopting a zoning map.[9] "The adoption of the 'Official Zoning District Maps of Newton County' on July 2, 1985 did nothing to revive the invalid ordinance of May 21, 1985."[10]

Similarly, in *Board of County Commissioners v. Rohrbach*, the county sought to enjoin defendants commercial composting business, claiming its business was operating in an area zoned agricultural.[11] Like in the present case, the county defined its zoning areas by reference to a zoning map:

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[2] *Vill. of Williston Park v. Israel*, 76 N.Y.S.2d 605, 607 (N.Y. Sup. Ct. 1948), aff'd, 94 N.Y.S.2d 921 (N.Y. App. Div. 1950), aff'd, 95 N.E.2d 208 (1950).
[3] *See e.g.*, *Newton Cty. v. E. Georgia Land & Dev. Co., LLC*, 764 S.E.2d 830, 833 (Ga. 2014) ("But the law requires such formalism, and as we have explained before, there are good reasons to insist upon such formalism in lawmaking, especially when it comes to the enactment of laws restraining the property rights of citizens.").
[4] *Keeney v. Village of LeRoy*, 254 N.Y.S. 2d 445, 447 (N.Y. App. Div. 1964).
[5] *See Newton Cty. v. E. Georgia Land & Dev. Co., LLC*, 764 S.E.2d 830, 832-33 (Ga. 2014) (finding zoning ordinance void because it referred to and purported to incorporate a non-existent zoning district map); *Bd. of Cty. Comm'rs v. Rohrbach*, 226 P.3d 1184, 1188 (Colo. App. 2009) (reversing injunction for alleged zoning violation because the county failed to produce the zoning map referred to in the zoning ordinance); *Keeney v. Village of LeRoy*, 254 N.Y.S. 2d 445, 447 (N.Y. App. Div. 1964) (vitiating ordinance when the court could not determine which zoning map was the "official" zoning map referred to in the ordinance); *Vill. of Williston Park v. Israel*, 76 N.Y.S.2d 605, 608 (N.Y. Sup. Ct. 1948), aff'd, 94 N.Y.S.2d 921 (N.Y. App. Div. 1950), aff'd, 95 N.E.2d 208 (1950); *Moon v. Smith*, 189 So. 835, 838-39 (Fla. 1939) (finding the zoning ordinance ineffectual for failure to attach the District Map referred to in the ordinance).
[6] *Newton Cty. v. E. Georgia Land & Dev. Co., LLC*, 764 S.E.2d 830, 831 (Ga. 2014).
[7] *Id.* at 831-32.
[8] *Id.* at 832-33.
[9] *Id.*
[10] *Id.* at 833.
[11] *Bd. of Cty. Comm'rs v. Rohrbach*, 226 P.3d 1184, 1185 (Colo. App. 2009).

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> The location of the zoning areas hereby established is shown on the accompanying map entitled "Official Zoning Map of Elbert County," dated July 5, 1983, which is hereby made, along with explanatory matter thereon, a part of this Regulation. The Official Zoning Map, together with each amendment thereto, shall be filed in the office of the Elbert County Clerk; who shall also maintain a current map at all times. All amendments to the map made in conformity with this regulation shall be recorded on the map within thirty (30) days of its adoption, showing general location, effective date, and nature of the change.
>
> ....
>
> The current Zoning Map and Zoning regulations will be available to the public in the Elbert County Planning Department and should be consulted for zoning information.[12]

At the trial on the injunction, the county produced various zoning maps, including maps from prior versions of the ordinance, but it was unable to produce the Official Zoning Map of Elbert County dated July 5, 1983 as referenced in the zoning ordinance.[13] The trial court granted the injunction. The appellate court reversed. It reasoned the county could not prove the zoning without producing the Official Zoning Map of Elbert County dated July 5, 1983 and thus it was not entitled to an injunction.[14]

Likewise, in *Moon v. Smith*, the ordinance divided the city into various use districts.[15] Like in the present case, the ordinance defined the boundaries of the use district by reference to a zoning map:

> The City of Orlando is hereby divided into ten (10) districts aforesaid and the boundaries of such districts are shown upon the map attached hereto and made a part of this ordinance being designated as the 'District Map' and said map and all the notations, references and other information shown thereon shall be as much a part of this ordinance as if the matters and information set forth by said map were all fully described herein.[16]

No map was attached to or made a part of the ordinance.[17] Facing an argument that the ordinance was ineffective for failure to attach the map, the city tried to excuse their failure by introducing a map into evidence which they claimed, although not attached to the ordinance, was the actual "District Map."[18] The court rejected their argument and found the zoning ordinance ineffective.[19]

Here, just as in the foregoing, SMPG defined its zoning districts by reference to a zoning map. For its zoning ordinance to be effective/enforceable, SMPG was required to keep a copy of

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[12] *Id.* at 1186.
[13] *Id*. at 1186-87.
[14] *Id*. at 1188-89 ("In sum, because the Board did not introduce a copy of the July 5, 1983 map in this case, it failed to prove that the Rohrbachs' property was zoned agricultural.").
[15] *Moon v. Smith*, 189 So. 835, 838 (Fla. 1939).
[16] *Id*.
[17] *Id*.
[18] *Id*. at 838-39.
[19] *Id*; *Keeney v. Village of LeRoy*, 254 N.Y.S. 2d 445, 447-48 (N.Y. App. Div. 1964) (finding the zoning ordinance vitiated when the court could not determine which of three maps presented was the official zoning map referenced in the zoning ordinance).

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the official zoning map referred to in the ordinance on file with SMPG Clerk of Court. SMPG has not. Accordingly, its zoning is unconstitutional and unenforceable.

SMPG is well aware of this fatal flaw with their zoning ordinance. SPMG President Chester Cedars admitted he knew as early 2012 that the map and zoning file were not on file with the SMPG Clerk of Court as described in the zoning ordinance.

Moreover, this issue arose again, as recently as April 8, 2019, when SMPG tried and failed to use its invalid zoning ordinance to enjoin the operations of a local businessman. At the trial on the injunction, the SMPG Clerk of Court testified no "zoning map" was on file, but that mere days before the trial an "Official Road and Highways Map" was filed. There was no indication that this "Official Road and Highway Map" was the map referred to in the zoning ordinance.

As if this was not enough to demonstrate the ambiguity of the zoning ordinance, the attorney for SMPG represented to the court at the April 8, 2019 trial that the zoning ordinance only extends five hundred feet from the road in residential areas and that anything beyond five hundred has no zoning restrictions:

The Court:

> Where's the zoning map? Where's the zones . . . ? What are the zones? To what extent does the zones extend?

SMPG:

> It extends to both sides of the roads - -

The Court:

> How far?

SMPG:

> The zoning ordinance indicates, Your Honor, that it extends to five hundred feet of the road for industrial and residential. There's no statement as to how far to the side of the road it extends for the W-1 and W-2 designations.

The Court:

> So there's some areas of the parish that are not zoned at all, according to your statements. If it only extends for five hundred feet from the road into a pasture that's more than five hundred feet, there's no zoning.

SMPG:

> That would be correct, your Honor.

At the conclusion of the trial, the court ruled the zoning ordinance was void and ineffectual due to the aforementioned errors, stating:

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> The defendants have raised two exceptions to the zoning. Those are the vested rights and the zoning ordinance being void and ineffectual due to problems with the recordation and the adoption or notice provisions under the zoning ordinance. The Court finds that both are applicable.[20]

These same deficiencies still exist with the SMPG zoning ordinance. Recent inquiry with the SPMG Clerk of Court's office confirmed the office still has no "Zoning District Identification File" or "Zoning District Map" on file as required by the zoning ordinance. Accordingly, the SMPG zoning ordinance is unconstitutionally vague and ambiguous and cannot be enforced.

## II. Defendants are Not in Violation of the Zoning Ordinance

Even assuming, *arguendo*, the purported zoning ordinance is constitutional, Defendants are not in violation. SMPG contends 1675 Duchamp Road is zoned R-2 (Mixed Residential). Zoning District R-2 permits the following uses:

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

Billy Broussard Farm and Land privately grows mushrooms at 1675 Duchamp Road, which is permitted as a private recreational use, private garden, or private nursery. He occasionally uses tree debris to feed the mushrooms. No commercial activity is being conducted. The activity being conducted is permitted in zone R-2. Accordingly, Billy Broussard Farm and Land is not violating the purported zoning ordinance.

## III. Ordinance No. 21-08-1329-OR Violates the Dormant Commerce Clause

Under the "dormant Commerce Clause" protectionist legislation is per-se invalid.[21] "The evil of protectionism can reside in legislative means as well as legislative ends."[22] A clear example of such legislation is "a law that overtly blocks the flow of interstate commerce at a State's borders."[23] The prohibition applies to not only a State that tries to horde a resource or benefit, but also to the "attempt[s] by one State to isolate itself from a problem common to many be erecting a barrier against the movement of interstate trade."[24]

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[20] The finding that the zoning was void and ineffectual was not reviewed by the Louisiana Third Circuit Court of Appeal because it was not included in the decretal language of the written judgment as a concession to SMPG.
[21] *City of Philadelphia v. New Jersey*, 437 U.S. 617, 623-24 (1978);*Vicksburg Healthcare, LLC v. State ex rel. Dep't of Health & Hosps.*, 2010-1248 (La. App. 1 Cir. 3/25/11), 63 So. 3d 205, 210 ("Under the dormant Commerce Clause, there is a 'virtually per se rule of invalidity' applicable to state regulations that directly discriminate against interstate commerce.").
[22] *City of Philadelphia*, 437 U.S. at 626.
[23] *Id*. at 624.
[24] *Id*. at 628.

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For example, in *City of Philadelphia v. New Jersey*, New Jersey legislature passed a law prohibiting the importation of solid and liquid waste originated or collected outside the State.[25] The legislature explained the quality of the environment in New Jersey was threatened by the increasing volume of liquid and solid waste and the decreasing capacity of the land fill sites within the State.[26] The United States Supreme Court explained New Jersey could not "isolate itself from a problem common to many be erecting a barrier against the movement of interstate trade."[27] Accordingly, the Court held the law unconstitutional under the Commerce Clause of the Constitution, explaining:

> The New Jersey law blocks the importation of waste in an obvious effort to saddle those outside the State with the entire burden of slowing the flow of refuse into New Jersey's remaining landfill sites. That legislative effort is clearly impermissible under the Commerce Clause of the Constitution.[28]

It is irrelevant that, here, the law at issue was passed by a municipality rather than the State. "[A] State (or one of its political subdivisions) may not avoid the strictures of the Commerce Clause by curtailing the movement of articles of commerce through subdivisions of the State, rather than through the State itself."[29] For example, in *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Department of Natural Resources*, a Michigan county forbid acceptance of solid waste for disposal if not generated within the county, absent explicit authorization.[30] The United States Supreme Court invalidated the law for the same reasons provided in *City of Philadelphia v. New Jersey*, despite the law discriminating against intra-state as well as interstate commerce.[31] The Court would not permit the county to "isolate itself from the national economy."[32]

Here, just like in the aforementioned cases, SMPG has attempted to block the flow of interstate commerce, apparently, to isolate itself from a problem common to many. The ordinance suggests the transportation, dumping, or burning of tree and vegetative debris is a threat to the safety, health and welfare of its citizens. Accordingly, it seeks to prohibit the transportation of any tree or vegetative debris from outside the parish for dumping or burning inside the parish. The ordinance makes an exception for transportation, dumping, and burning of trees or vegetative debris that originated inside the parish. At the August 3, 2021 St. Martin Parish Council meeting,

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[25] *Id*. at 618-19.
[26] *Id*. at 625.
[27] *Id*. at 628.
[28] *Id.* at. 629.
[29] *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Nat. Res.*, 504 U.S. 353, 361 (1992).
[30] *Id*. at 357.
[31] *Id*. at 358-68.
[32] *Id*. at 361.

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Parish President Chester Cedars confirmed the protectionist motivations when defending the ordinance:

> It's a crying shame we have to go to Court to keep somebody from burning something in a neighborhood after they transported from probably outside of this parish and from another location, really and truly. So I support this ordinance. I think it's a good ordinance.

The ordinance is undoubtedly protectionist in nature. It seeks to discriminate against tree and vegetative debris from outside the parish. Tree and vegetative debris are items of commerce.[33] Accordingly, the ordinance is invalid, per se. The Commerce Clause does not allow St. Martin Parish to "isolate itself from the national economy."[34]

## IV. Ordinance No. 21-08-1329-OR is Overbroad, Vague and Arbitrary

"[A] zoning ordinance must be sufficiently definite to notify citizens of their rights pursuant to the ordinance" in order to be constitutional.[35] A "person of ordinary intelligence" must have a "reasonable opportunity to know what is prohibited so that he may act accordingly."[36] The constitution also imposes these requirements of definiteness and clarity to "prevent arbitrary and discriminatory application."[37] Lastly, the ordinance must bear "a substantial relation to the public health, safety, morals, or general welfare."[38] If the ordinance "is clearly arbitrary and unreasonable . . . it must be struck down."[39]

Here, Ordinance No. 21-08-1329 is overly broad and/or vague. For example, the ordinance prohibits the transportation for the purposes of storing, dumping, or depositing "any building or construction materials, brush, limbs, trees, leaves, tires, trash, or any other refuse or abandoned items or materials whatsoever" unless it was generated on the person's own property in St. Martin Parish, subject to a fine or up to thirty days of imprisonment. As written, a St. Martin Parish resident who mulches their garden with mulch purchased from Wal-Mart could be imprisoned for up to thirty days. So to could a St. Martin Parish resident who purchases brick pavers from "Mike Baker Brick" in Lafayette Parish in order to install a brick patio. Both would be transporting tree or building material generated outside the parish for deposit onto their property within the parish. Such a vague and overly broad ordinance cannot be permitted. It will undoubtedly lead to

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[33] "All objects of interstate trade merit Commerce Clause protection; none is excluded by definition at the outset." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 622 (1978). The United States Supreme Court has recognized even solid and liquid waste is commerce. *Id. see also Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Nat. Res.*, 504 U.S. 353, 359 (1992) ("Solid waste, even if it has no value, is an article of commerce.").
[34] *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Nat. Res.*, 504 U.S. 353, 361 (1992).
[35] *Summerell v. Phillips*, 282 So. 2d 450, 453 (La. 1973)
[36] *Wheeler v. City of Pleasant Grove*, 664 F.2d 99, 100 (5th Cir. 1981).
[37] *Med Exp. Ambulance Serv., Inc. v. Evangeline Par. Police Jury*, 96-0543 (La. 11/25/96), 684 So. 2d 359, 367.
[38] *Wheeler*, 664 F.2d at 100.
[39] *Id*. at 100

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discriminatory or arbitrary enforcement. In fact, upon information and belief, this was the very purpose—to create a vague ordinance that could be used to discriminate against Defendants. Accordingly, for that reason, the ordinance must be invalidated.

Moreover, this ordinance is clearly arbitrary and not substantially related to public health, safety, morals or general welfare. The ordinance permits a St. Martin Parish resident to burn tree and vegetative debris generated on their own land. The ordinance also permits a St. Martin Parish resident to transport tree or vegetative debris generated on their own property to other property they own for burning. Per this ordinance, Billy Broussard could burn every single tree on his 35-acre property, and it would not be a nuisance nor would it threaten the safety, morals or general welfare of the public; however, if Billy Broussard merely deposits (not burns) a single cut tree on his property in order to feed his mushrooms and that tree originated outside of his property, it is a nuisance and threat to the safety, morals or general welfare of the public. This is a completely arbitrary and unreasonable restriction. Thus, for that reason, as well, the ordinance must be invalidated.

**Conclusion**

Considering the foregoing, BILLY BROUSSARD, BILLY BROUSSARD FARM AND LAND DEVELOPMENT, LLC, and BROUSSARD COMPANIES, LLC, respectfully request that the "Petition for Temporary Restraining Order, Preliminary Injunction and Permanent Injunctive Relief" be dismissed/denied.

Respectfully submitted:

GIBSON LAW PARTNERS, LLC

/s/ MICHAEL O. ADLEY

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Attorneys for BILLY BROUSSARD, BILLY BROUSSARD FARM AND LAND DEVELOPMENT, LLC and BROUSSARD COMPANIES, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing instrument has this day been served on all parties through their counsel of record in this proceeding by:

| | | | | | |
|---|---|---|---|---|---|
| ( ) | Hand Delivery | ( ) | Prepaid U.S. Mail | ( x ) | Email |
| ( ) | Facsimile | ( ) | Overnight Mail Service | | |

Lafayette, Louisiana, this 7th day of September, 2021.

/s/ MICHAEL O. ADLEY

MICHAEL O. ADLEY