

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-324

RESTLAWN PARK CEMETERY, INC.

versus

PARISH OF JEFFERSON

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 836-691, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

April 09, 2026

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Timothy S. Marcel

AFFIRMED

FHW
MEJ
TSM

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLANT,
RETLAWN PARK CEMETERY, INC.

Robert T. Garrity, Jr.
Pierre W. Mouldoux

COUNSEL FOR DEFENDANT/APPELLEE,
PARISH OF JEFFERSON

Matthew A. Sherman
Nicholas R. Varisco

WICKER, J.

Appellant, Restlawn Park Cemetery, Inc., appeals the judgment of the 24th Judicial District Court denying and dismissing its Petition for Writ of Mandamus, which challenged the decision of the Jefferson Parish Council denying appellant's subdivision and rezoning applications.¹ For the reasons stated below, we affirm the decisions of the Council and the district court.

FACTS AND PROCEDURAL HISTORY

Restlawn Park Cemetery, Inc. ("Restlawn") owns a parcel of land, which it has operated as a cemetery since 1971. The property, consisting of approximately twenty-seven acres, is located at 3450 U.S. Highway 90 in Avondale, Louisiana, in the J.S. Brady Annex Subdivision (the "Property"). The property has been zoned and rezoned by various categories over the course of the last sixty plus years. In the Jefferson Parish's (the "Parish") initial comprehensive zoning ordinance, passed in 1958, the Property was zoned M-1 Industrial. In 1966, the Parish rezoned the Property C-1 Neighborhood Commercial, C-2 General Commercial, and R-3 Multiple Family. Those zoning classifications were in effect when Restlawn began operating a cemetery on the Property in 1971. In 1992, the Property was rezoned as R-2 Two-Family and is currently so zoned. The operation of a cemetery is a permitted use in the R-2 zoning district.

Restlawn desires to build a funeral home on the Property, however, a funeral home is not a permitted use for property zoned as R-2. In furtherance of the proposed development of the funeral home, Restlawn sought to have the Property subdivided into two separate lots, C-1A and C-1B.² Lot C-1A would consist of a

¹ The subdivision application was assigned Docket No. WS-92-22 (Summary No. 26021) by the Planning Department, and the rezoning application was assigned Docket No. WZ-12-22 (Summary No. 26025) by the Planning Department. These docket and summary numbers were utilized to reference the respective applications throughout the proceedings before the PAB and the Jefferson Parish Council.

² Docket No. WS-92-22, Summary No. 26021.

tract containing approximately 1.79 acres on which Restlawn proposed to build the funeral home. Lot C-1B would continue to operate as a cemetery. Restlawn also sought to have the new proposed lot C-1A rezoned to zoning classification C-1, Neighborhood Commercial District, which is the next lowest zoning classification that includes a funeral home as a permitted use.³

Proposed Lot C-1A would front on and be accessed by U.S. Highway 90 (“Highway 90”). Proposed Lot C-1B would continue to be zoned R-2. Other properties fronting on Highway 90 are currently variously zoned C-1 Neighborhood Commercial District, C-2 General Commercial District, IL Light Industrial, and MUCD Mixed use Corridor District. Properties behind those fronting on Highway 90 are zoned residential, although some commercial classifications are contained within the neighborhoods. Because Restlawn was seeking a zoning change, its Resubdivision and Rezoning Applications were subject to public hearings before the Planning Advisory Board (the “PAB”) and the Jefferson Parish Council (the “Council”), as well as to legislative action by the Council.

Planning Department Proceedings

In 2022, Restlawn submitted its Resubdivision and Rezoning Applications to the Jefferson Parish Planning Department (the “Planning Department”), which thereafter conducted a technical review of the two Applications and recommended approval of both.

The Planning Department described the neighborhood in which the Property is located as “lacking a norm or character” due to the varying zoning classifications and uses found within the neighborhood. It found that the proposed subdivision met all major subdivision review criteria for preliminary/final plats, including all

³ Docket No. WZ-12-22, Summary No. 26025.

requirements of the Parish's Unified Development Code and Comprehensive Development Plan, known as Envision Jefferson 2040. The Planning Department also found that Restlawn's Rezoning Application met all approval criteria for map amendments. In particular, as to both Applications, the Planning Department found that the proposed subdivision and zoning would further the Parish's goals of providing sites where businesses could locate and thrive and of optimizing the function and use of community facilities and services to improve quality of life and economic development for residents and businesses. No Parish department objected to the Resubdivision or the Rezoning Applications.

Public Hearing(s) Before the Planning Advisory Board

The head of the Planning Department, Bess Martin, presented the Planning Department's reports and recommendations for approval to the PAB, which on September 8, 2022, conducted a public hearing. During that hearing, Ms. Martin discussed the Department's reports and recommendations as to the Applications and informed the PAB that the Planning Department believed that the proposed subdivision and rezoning would serve the public health, safety, and welfare.

During the public hearing, Larry Chedotal, Restlawn's President, also spoke in favor of the Applications. He stated that the construction of the proposed funeral home would put the Property back on the Jefferson Parish tax rolls (as cemeteries do not pay property tax), that Restlawn would be making a substantial financial investment in the Property, and that he believed the construction and operation of the proposed funeral home would benefit the Parish and the residents of Avondale.

Five neighborhood residents, including Pastor Damien Brown, the pastor of Little Zion Missionary Baptist Church, spoke in opposition to the Applications.⁴

⁴ Little Zion Missionary Baptist Church is located across Avondale Garden Road from the cemetery.

They complained that no one from Restlawn had met with or consulted them prior to the public hearing. They generally expressed that they did not want a funeral home on the Property, stated that Avondale needed other types of businesses rather than a funeral home, and stated that they believed a funeral home would devalue their residential property. No opponent submitted any evidence in support of their claims. One neighborhood resident also mentioned drainage, but did not identify any particular issue with drainage. The speakers' specific complaints were that the fence on the Property was falling down; there was constant relocating of caskets and bodies going on in the cemetery; Restlawn's workers were urinating outside in view of their homes because there were no bathrooms present on the Property; and trash and debris constantly piled up on property adjacent to the Property, causing standing stagnant water and breeding mosquitoes.

Mr. Chedotal responded that Restlawn was in the process of cleaning up and repairing the fence. He stated that Restlawn was constructing a building on the Property that would house the cemetery equipment. He further stated that Restlawn, like most cemeteries in the greater New Orleans area, is a "reuse" cemetery, and had been such since its inception, so there is nothing that can be done about the relocating of caskets.⁵ He reiterated that he believed that the funeral home would provide a benefit to the community.

At the close of the public hearing, the PAB voted to defer the matter to give members a chance to investigate the claims that had been made at the hearing. The public hearing reconvened on November 3, 2022.

During the November 3, 2022 hearing, the Planning Department stated that it had no additional information to add to its recommendations and reports. Mr. Chedotal and Restlawn's counsel, David Greenberg, spoke in favor of the

⁵ A "reuse" cemetery is one that re-interrers remains in existing grave plots after a number of years.

Applications. They emphasized that the proposed funeral home would increase tax revenue for the Parish. They also stated that if the Applications were approved, Restlawn would relocate its offices from Gretna to Avondale. They asserted that there was a need for a funeral home in the area because a lot of elderly residents lived locally, and the closest funeral home in any direction was more than six miles away. Messrs. Chedotal and Greenberg represented that the proposed location was the only location on which Restlawn could build the proposed funeral home.

Eleven neighborhood residents spoke in opposition to the Applications, including the five who had spoken in opposition at the September 8, 2022 hearing. Again, their objections were general. They stated that Avondale did not need a funeral home; it needed a grocery store and convenience stores. They stated that Restlawn should put something on the Property that *they* need and want, instead of what Mr. Chedotal wants, because they have supported Restlawn by purchasing cemetery plots there over the years. They complained that Mr. Chedotal lives in Mississippi, not Avondale. They stated that there are a lot of elderly people and children in the neighborhood and they should not have to view funerals and hearses every day. They pointed out that Restlawn owns a lot of property on Highway 90 and should put the funeral home on the back of the Property or somewhere else entirely, such as in Gretna, where Restlawn's current office is located.

In rebuttal, Messrs. Chedotal and Greenberg reiterated that Restlawn would be investing millions of dollars in the Property, was in the process of constructing a fence that would shield its activities from the public, and was constructing a building on the back of the Property to hold equipment. They stated that Restlawn has not engaged in dumping trash on land adjacent to the Property; instead, the dumping had been done by third parties, whom Restlawn did not control. They stated that, in fact, Restlawn had installed video surveillance cameras to deter such activity. They also represented that, with the new construction, bathrooms would

be constructed and would be available to the workers. Mr. Chedotal also stated that, although he does not live on the Westbank, his son and his parents do.

Mr. Greenberg stated that Restlawn is not in the grocery store or convenience store business; rather is in the cemetery and funeral business. It would not, under any circumstance, be seeking permission to construct a grocery store or convenience store on the Property. He also stated that Restlawn was proposing to put a beautiful funeral home and a parking lot on the Property; that the funeral home, together with the library being constructed on an adjacent lot, a lot that Restlawn had recently sold to the Parish (the “Library Property”), would potentially spur other businesses to invest in Avondale.

At the close of the public hearing, the PAB unanimously voted to recommend denial of the Subdivision and Zoning Applications. No reasons for the decision were offered.

Public Hearing Before the Council

Both the subdivision and the rezoning applications were presented to the Council and were taken up at its December 14, 2022 meeting. Nearly all arguments made before the Council had been made to the PAB.

Mr. Greenberg first spoke in favor of approval of the Applications, pointing out that Restlawn has owned the Property for more than fifty years and that the Property was previously zoned as industrial, and then, as commercial. He stated that during the fifty years that it owned the Property, Restlawn had been a good neighbor, had provided employment for members of the community, and had utilized its employees and equipment to assist neighbors when asked. He said that, if the Applications were approved, there would be no more than two funerals at the funeral home at any one time, and that Restlawn would not have a crematorium on the Property. Mr. Greenberg observed that the Property fronts on Highway 90 and is unlikely to be developed for residential purposes. He also reminded the Council

that the Parish had recently purchased the Library Property – which fronts on Highway 90 and is located only eighty-four feet from the Restlawn cemetery property, and that, in conjunction with the library purchase and sale, Restlawn and the Parish had had appraisals made, each concluding that the highest and best use of the Library Property was commercial.

Mr. Greenberg also represented to the Council, as he had to the PAB, that if the Applications were approved, Restlawn would relocate its offices to the Property. He reiterated that the proposed funeral home project would represent a multi-million-dollar investment by Restlawn in Avondale and that the investment in infrastructure and development would put significant capital at risk, which would spur additional investment in Avondale by other businesses.

Mr. Chedotal represented to the Council that, if the Applications were granted, the funeral home property would generate twenty to thirty thousand dollars in tax revenue to the Parish annually. He stated that there are no residences on Highway 90 and that the businesses that are located near the Property include a truck stop, a Raceway gas station, a Family Dollar grocery store, a Popeyes, and a Wendy's. He stated that he could not understand the reasoning behind allowing those businesses to locate in front of a residential area while declining to allow a funeral home to be located in front of an already existing cemetery.

Two individuals, Pastor Brown and Adrienne Gabriel, spoke in opposition to the approval of the Applications. Both had appeared before the PAB. Pastor Brown reiterated that residents in the neighborhood were in the position of having to watch rearrangements of coffins and remains on a daily basis. He again stated that Restlawn employees were relieving themselves outdoors in the view of people living in the neighborhood. He also stated that whenever there is a funeral, traffic

backs up on Avondale Garden Road, which is already congested.⁶ He stated that, although Restlawn had promised to relocate its headquarters to Avondale if the Applications were approved, Restlawn should have been embedded in the community before seeking to construct a funeral home. He opined that Restlawn had been located in the neighborhood for more than fifty years without contributing anything to the residents or the Avondale community. The pastor acknowledged that Restlawn had begun making improvements to the Property after it filed the Applications but stated that Restlawn had not been a good neighbor for over fifty years. He stated that the residents believed that Restlawn was trying to “force [the funeral home] down the throats of disadvantaged black people” and that they did not want a funeral home on the Property. Ms. Gabriel presented a petition signed by people who were opposed to the Applications but could not be present at the hearing. The opponents offered no documentary evidence in support of their claims.’

Council Member Byron Lee, in whose district the Property is located, observed that he had met with the neighbors and that they were steadfast in their opposition and very committed to their position. He did not discuss any other issues with the Applications. Thereafter, he moved to deny both Applications. Without further discussion, the Council voted unanimously to deny both.

District Court Proceedings

On January 12, 2023, Restlawn filed a Petition for a Writ of Mandamus (the “Petition”) in the district court, asserting that the Council’s decisions were manifestly erroneous, arbitrary and capricious, and an abuse of discretion.⁷

⁶ The Applications did not require a traffic impact study, and none was conducted.

⁷ Appellant’s pleading is styled simply as a Petition for a Writ of Mandamus; however, mandamus is not an appropriate procedure for relief from an action of a public officer where there is an element of discretion left to the public officer. *Lighthouse RV Park, LLC v. St. John the Baptist Parish Council*, 12-149 (La. App. 5 Cir. 9/11/12), 101 So.3d 448, 453. It is clear from the body of the petition that appellant was/is, in fact, seeking a reversal of the Council’s decisions denying the Applications and, thereafter, a writ of mandamus to compel the Council to

Restlawn further contended that the Council's denials of the Applications amount to a taking of its property without just compensation because those denials effectively remove the Property from commerce and deprive Restlawn of its constitutional rights to the use and enjoyment of its property.⁸ The Petition sought to have the district court order the Council to approve the Resubdivision Application and the Rezoning Application and to cause the necessary permits to be issued to enable Restlawn to construct the proposed funeral home on the Property.

A trial on the Petition was conducted on March 31, 2025. Restlawn called four witnesses to testify at trial: Mr. Chedotal, Bess Martin, the head of the Planning Department, John Livicarri, Restlawn's general manager, and Dr. Donald Poland, who testified as an expert witness in the field of urban planning.

Mr. Chedotal

Mr. Chedotal's testimony was consistent with the statements that he made at the PAB and Council hearings. He also testified that he had been involved with the cemetery in 1992 when the Parish rezoned it to R-2. Mr. Chedotal stated that he had been unaware of the zoning change, discovering it only when he filed the Resubdivision Application. He further testified that the only means of ingress into and egress from the Property is via Highway 90. Therefore, traffic from the proposed funeral home would be limited to Highway 90. He admitted that burials at Restlawn occasionally affect traffic on Avondale Garden Road but stated that this only occurs when there is a funeral at the church on that road. Mr. Chedotal stated that the same was true of George Street, where a separate church is located. Mr. Chedotal also testified that the proposed funeral home would not create

approve the Applications and issue the necessary permits and will be so treated. *Estate of Petrovich v. Jules Melancon, Inc.*, 08-185 (La. App. 5 Cir. 9/30/08), 966 So.2d 520, 525 ("Our courts consistently look beyond the caption, style, and form of the pleadings to determine from the substance of the pleadings the nature of the proceeding." (citation omitted)).

⁸ Appellant did not pray for any damages or compensation as a result of the alleged unlawful taking.

parking issues on Avondale Garden Road for a funeral or a cemetery interment because the guests would park at Restlawn's parking lot.

Ms. Martin

Ms. Martin described the process for seeking resubdivision and rezoning. She testified that the process was the same for each, except that where a proposed resubdivision complies with all provisions of the Jefferson Parish Municipal Code, including zoning, resubdivision can be ministerial within the Planning Department. Rezoning, however, is always legislative, meaning it must go through the PAB and the Council. She stated that the Planning Department conducts a technical review of proposed resubdivision and rezoning applications to determine whether they comply with the Code. It does not receive public comments. Ms. Martin testified that both the proposed resubdivision and rezoning met all applicable criteria and standards for approval.⁹ She also stated that it would not have made sense to pursue the Resubdivision Application absent approval of the Rezoning Application. Regarding traffic, Ms. Martin stated that a traffic impact assessment ("TIA") was not required for the Applications. She admitted that properties on either side of the Property are zoned for commercial and industrial uses. She further stated that in the Planning Department review process, property fronting on Highway 90 is not considered appropriate for residential development.

Ms. Martin also testified that neither the PAB nor the Council is bound to accept the recommendation of the Planning Department and that, very often, they do not. Ms. Martin had been present at the first PAB hearing and the Council hearing, where she heard the complaints of the opponents. When questioned as to whether any of the complaints lodged at the hearing had any bearing on the public health, safety, and welfare, Ms. Martin stated that workers urinating out in the open

⁹ The Department of Public Works did request the addition of two servitudes, to which Restlawn agreed.

would be something that could affect public health, safety and welfare. She also stated that she did not intend her testimony to be construed as implying that the complaints of the opponents lacked merit.

Mr. Livicarri

Mr. Livicarri testified that he had been Restlawn's general manager for four years. He stated that he was familiar with the streets around the cemetery and the neighbors, with whom he claimed to interact on a regular basis. He further testified that he had assisted in the preparation of the Applications and that he had reviewed the list of required notices to people living within 100 feet of the Property. Mr. Livicarri stated that Restlawn paid the Parish to send out 200 letters to neighboring property owners.

Mr. Livicarri testified that he had attended both PAB hearings and that he took down the addresses of the individuals who spoke in opposition to the Applications. According to Mr. Livicarri, of the individuals who spoke at the PAB hearings, only four of them actually lived within 300 feet of the Property.

Mr. Livicarri admitted that traffic sometimes backs up on Avondale Garden Road but attributed the traffic back-ups to funerals and Sunday services being held at Pastor Brown's church. Mr. Livicarri opined that the church did not have adequate parking for its services.

Mr. Livicarri also testified that a wooden fence had been erected at the Property to replace the previous fence. He stated that Restlawn had tried to be a good neighbor to the surrounding community, allowing neighboring residents to use Restlawn's backhoe, having its employees assist neighbors in moving furniture and hiring people from the community as its employees.

Dr. Donald Poland

Dr. Poland was stipulated to be an expert in urban planning and land use. In rendering his opinions in this matter, Dr. Poland relied on his own explorations of

the area during the time when he was working with St. Bernard Parish between 2008 and 2016. He had also reviewed the Applications, various documents and records related to the area, Google Maps, and the audio and/or video recordings of the public hearings before the PAB and the Council.

Dr. Poland described the area surrounding the Property as a “hodgepodge” of different zoning classifications and uses. He stated that there is no zoning or use consistency in the area except that property fronting on Highway 90 was primarily used for commercial purposes.

Dr. Poland explained that most funeral homes and cemeteries are located along major or minor arterials and are typically located in proximity to areas of residential and commercial uses. He stated that the land to the east of the Property is zoned M-1 Industrial, the land to the west is a mixture of C-1 and C-2 commercial, and the land across the road is a mixed use designed district overlay, which allows both commercial and residential. He stated that major arterials, such as Highway 90, are typically commercially oriented due to high traffic volume and the noise associated with traffic. Dr. Poland stated that the corridor in which the Property is located is overwhelmingly commercial, both in zoning and in use, and that the R-2 zoning classification for the Property is inconsistent with the surrounding area.

In Dr. Poland’s opinion, none of the opponents to the Applications provided any testimony or evidence bearing on public health, safety and welfare. Nor did the PAB or the Council discuss or consider the objective criteria for approval and whether the proposed rezoning and resubdivision were inconsistent with the objective criteria. Although Dr. Poland acknowledged that at least one of the residents who spoke at the public hearings had raised the issue of traffic, these concerns were not elaborated upon, and no expert testimony had been presented by the opponents relative to traffic issues. Dr. Poland stated that, normally, when

such concerns are present, the opponents would present such evidence at the public hearings. He also observed that the Planning Department's reports and recommendations stated that no TIA was required.

Dr. Poland opined that because the Applications were consistent with the Comprehensive Plan (The Jefferson Parish Comprehensive Land Use Plan), consistent with existing land use in the area, with no meaningful public comments in opposition, and no discussion by the voting authorities of the objective criteria, the Council's decision denying the Applications was an arbitrary and capricious, an abuse of discretion and manifestly erroneous. He saw nothing in the record to indicate that the PAB or the Council followed their own codified criteria that they adopted to guide them on making decisions.

The Ruling

The district court took the matter under advisement. Judgment was entered on May 14, 2025. The district court also provided written Reasons for Judgment, which were entered on the same day. Therein, the district court opined:

The Parish Council's denial of the Applications was not arbitrary and capricious. The record includes the recommendations of the PAB for denial of the Applications and the opposition of community members who expressed concerns at the PAB hearing and the Parish Council hearing that the proposed resubdivision and rezoning would affect the health, safety, and welfare of the public. The community members strongly objected to having a funeral home in their community. The oppositions included the following: The property already has drainage issues and running sewerage. Employees urinate outside under trees within sight of the nearby residents. Illegal dumping occurs on the property line at Center Street and trash and tires have piled up. The traffic already backs up when there are funerals.

In light of the evidence presented, the Parish Council's actions were reasonable related to promoting public health, safety and general welfare. Restlawn Cemetery failed to meet its burden of proving that the Parish Council's decision bears no substantial relationship to the public health, safety, morals, or general welfare and failed to overcome the presumption that the Parish Council's decisions were reasonably related to the health, welfare, and safety of the public.

Restlawn filed a Motion for Appeal on May 28, 2025, which was granted on the same date. This appeal timely followed.

ASSIGNMENTS OF ERROR

Restlawn did not identify any assignments of error, as such, in its brief filed in this Court.¹⁰ It has identified five issues that are presented for review, four of which challenge the decisions of the Council and the district court as being manifestly erroneous and/or arbitrary and capricious. The bases of Restlawn's claims that the decisions of the Council and the district court were manifestly erroneous/arbitrary and capricious are that : (1) the Council's decisions "solely" took into account the "subjective concerns of the community members"; (2) the Council's decisions were made without providing any stipulations that Restlawn could remedy to achieve approval; (3) Restlawn's Property fronting on Highway 90 is the last lot that continues to be zoned residential; all other properties that front on Highway 90 are currently zoned commercial or industrial; and (4) the denial of Restlawn's applications results in "reverse spot zoning." The final issue raised by Restlawn is that it has been deprived of due process.

DISCUSSION

The general authority for local government to regulate land use is conferred by La. Const. Art. 6, § 17, 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.

Thus, the authority to regulate land use regulations, including zoning and resubdivision regulations, flows from the police power of the various governmental

¹⁰ Uniform Rules-Courts of Appeal Rule 2-12.4(A)(5) requires an appellant to set forth the assignments of alleged errors.

bodies and is a legislative function. *Inv. Mgmt. Servs., Inc. v. Vill. of Folsom*, 00-832 (La. App. 1 Cir. 5/11/01), 808 So.2d 597, 604); *Smith v. City of Baton Rouge*, 233 So.2d 569 (La. App. 1st Cir.1970); *Meyers v. City of Baton Rouge*, 185 So.2d 278 (La. App. 1st Cir. 1966); *State ex rel. Dema Realty Co. v. McDonald*, 168 La. 172, 121 So. 613 (1921)[1929]; *State ex rel. Civello v. City of New Orleans*, 154 La. 271, 97 So. 440 (1923). Accordingly, “a *prima facie* presumption of validity attaches to zoning [and resubdivision] actions” and the courts will not interfere with the decisions of [the governing] bodies unless it is plain that their action is without any relation to the public health, safety, or general welfare. *Falcon v. Par. of Jefferson*, 22-526 (La. App. 5 Cir. 6/14/23), 367 So. 3d 857, 862, *writ denied*, 23-974 (La. 10/31/23), 372 So.3d 809¹¹; *K.G.T. Holdings, LLC v. Parish of Jefferson*, 14-872 (La. App. 5 Cir. 3/25/18); *TTC Props., Inc. v. Parish of Jefferson*, 17-363 (La. App. 5 Cir. 2/27/17), 237 So.3d 623, 625-26; *Willow, Inc. v. Jefferson Parish Council*, 05-754 (La. App. 5 Cir. 4/25/06), 928 So.2d 756, 759, *writ denied*, 06-1596 (La. 9/29/06), 937 So.2d 869; *Jenniskens v. Parish of Jefferson*, 06-252 (La. App. 5 Cir. 10/17/06), 940 So.2d 209, 212, *writ denied*, 06-2808 (La. 2/16/07), 949 So.2d 245; *Parish of Jefferson v. Davis*, 97–1200 (La. App. 5 Cir. 6/30/98), 716 So.2d 428, 433, *writ denied*, 98-2634 (La. 12/11/98), 730 So.2d 460; *Palermo Land Co., Inc. v. Planning Com'n of Calcasieu Parish*, 561 So.2d 482, 492 (La.1990); *see also 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.*, 561 So.2d at 492. Further, the burden

¹¹ *See also*, La. R.S. 33:101.1, which limits judicial review of a resubdivision decision to whether “such ordinance or act is arbitrary and capricious thereby constituting an abuse of discretion, unreasonable exercise of police powers, an excessive use of the power herein granted, or denial of the right of due process.”

of proof rests with 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.” *Id.* The same analysis applies to both zoning and subdivision regulations. *Cerruti v. Par. of Jefferson*, 94-608 (La. App. 5 Cir. 1/18/95), 650 So. 2d 315, 317, *citing Bourbon Country Estates v. St. James Parish*, 611 So.2d 180, 182 (La. App. 5th Cir. 1992), *writ denied* 613 So.2d 997 (La. 1992); *see also Christopher Estates v. Parish of East Baton Rouge*, 413 So.2d 1336 (La. App. 1st Cir.1982). Further, it is well-established that courts do not consider whether a governing body’s land use decision is “*justified* by considerations of public health, safety, comfort, or the general welfare. *It is sufficient that the municipal council could reasonably have had such considerations in mind*” *State ex rel. Civello*, 97 So. at 444.

(Emphasis added).

Whether an ordinance bears the requisite relationship to the health, safety and welfare of the public is a factual question which must be determined from the evidence in the record. If it appears that appropriate and well-founded concerns for the public *could have been* the motivation for the zoning ordinance, it will be upheld. *Monte v. Parish of Jefferson ex rel. Coulon*, 04–1059 (La. App. 5 Cir. 2/15/05), 898 So.2d 506, 511, *citing Palermo Land Co.*, 561 So.2d at 492.

A challenge to a zoning decision in Louisiana is not an appeal from a decision of a lower tribunal wherein the reviewing court scrutinizes the record below to test the accuracy of the decision; rather, it is a *de novo* proceeding that tests whether the result of the legislation is arbitrary and therefore a taking of property without due process of law. *Shaw v. Jefferson Par.*, 15-453 (La. App. 5 Cir. 2/24/16), 186 So. 3d 1181, 1184; *Jenniskens*, 940 So.2d at 213, *citing Hernandez v. City of Lafayette*, 399 So.2d 1179 (La. App. 3d Cir.1981). On appellate review, the court's inquiry is limited to the reasonableness of the council's

decision; it does not consider whether the district court manifestly erred in its findings. *Id.* at 1185; *King v. Caddo Parish Com'n*, 97–1873 (La. 1998), 719 So.2d 410; *Maynard Batture Venture v. Parish of Jefferson*, 00–1669 (La. App. 5 Cir. 4/11/01), 786 So.2d 757, writ denied 01–1386 (La.6/29/01), 794 So.2d 815. A zoning or resubdivision decision by a City Council is not invalid merely because the City Council did not include an explanation of its decision. *3000-3032 St. Claude Ave., LLC v. City of New Orleans*, 22-813 (La. App. 4 Cir. 6/22/23), 368 So.3d 1160, 1167.

The concerns and desires of the electorate are appropriate considerations in the decision-making process on zoning. *Palermo*, 561 So.2d at 495. (Citation omitted). The opinion of the neighborhood associations and the other residents of the area must be given weight for determining the nature and character of the area. *Jenniskens*, 940 So.2d at 215, citing, *Lakeshore Harbor Condominium Development v. City of New Orleans*, 603 So.2d 192, (La. App. 4th Cir.1992). “Those with zoning authority are elected officials, and as such, they represent the interests of those who elected them. ***The interests of the public are at the heart of the welfare of a community.***” *Palermo Land Co.*, 561 So. 2d at 494–95. (Emphasis added).

Guided by the foregoing principles, we have thoroughly reviewed the evidence in this matter and conclude that the Council’s denial of the Rezoning and Resubdivision Applications was not arbitrary and capricious. The PAB conducted two public hearings on the Applications. It adjourned the first hearing in order to investigate the claims made by the opponents. Following the second hearing, the PAB unanimously voted to recommend denial of the Applications.

The Council had before it the report and recommendation of the Planning Department and the record of the proceedings before the PAB. It was clear at the public hearing before the PAB and the Council that the neighborhood residents

were strongly opposed to rezoning and development of a funeral home on the Property. The concerns of the neighbors were not all subjective. They complained about drainage, traffic, and sewerage issues, in addition to their general opposition to the development of the funeral home. Messrs. Chedotal and Liviccari admitted that there were traffic issues. The neighbors also complained that the proposed development would diminish their property values. Council Member Lee, in whose district the Property is located, stated that he had met with the parties and discussed the issues, and that opposition was strong and steadfast.

As discussed above, a strong presumption of validity attaches to the Council's land use decisions and we will not substitute our judgment for that of the governing authority in the absence of clear evidence that its action is without any relation to the public health, safety or general welfare. The zoning ordinance designating the Property R-2 is presumed to have been adopted by the Jefferson Parish Council for valid purposes. The burden is on the party or parties attacking the ordinance to overcome this presumption of validity. *See Terrytown Props., Inc. v. Jefferson Parish*, 416 So. 2d 323, 324 (La. App. 5th 1982). Thus, Restlawn bore a heavy burden of proving that the Council's decisions bore so little relation to public health, safety or welfare as to render them arbitrary and capricious.

The first issue raised by Restlawn in support of its claims that the Council's decisions were arbitrary and capricious is that the denials were motivated solely by public opposition. A similar claim was made in *Kirk v. Town of Westlake*, 373 So. 2d 601, 604 (La. App. 3rd Cir. 1979); *writ denied sub nom. Kirk v. Westlake*, 376 So. 2d 1268 (La. 1979). There, the plaintiff sought a rezoning of property which was denied by the Mayor and Board of Aldermen, after the Zoning Commission recommended denial. The plaintiff then sought a writ of mandamus directed to the Mayor and Board of Aldermen ordering them to approve the rezoning request,

claiming, in part, that the denial was based solely on public opposition. The court found this claim to be unavailing, stating:

At trial, Mr. Kirk called several members of the Board of Aldermen as witnesses. All of these witnesses testified that the major consideration which persuaded them to vote against the zoning change was the opposition of the residents in the area. None attached much significance to traffic increases, inadequate sewerage systems, and disproportionate taxation. Additionally, plaintiff introduced other witnesses, which, we feel, clearly showed that there is a housing shortage in Westlake, that there is a dearth of mobile home spaces in Westlake, that the placement of a mobile home park in this area would not cause an unreasonable increase in traffic, that the sewerage system could handle the proposed mobile home park, and that there would be as much or more tax revenue generated by developing the land into a mobile home park than as single residences.

However, even though plaintiff effectively proved that the mobile home park would not create the problems anticipated by the Zoning Commission and the Mayor and Board of Aldermen, we do not feel that he has borne the burden of proof required of one who desires a Court to substitute its views for those of a municipal governing body.

Thus, the *Kirk* court found that even though the plaintiff had successfully refuted all of the opponent's complaints, the decision of the Mayor and Board of Aldermen was not arbitrary and capricious. Although we do not find that Restlawn refuted all of the opponent's complaints, we here find that Restlawn has not borne the burden of proof required for us to substitute our views for those of Council. As stated in *Palermo Land Co.*, "[i]t is not necessary, for the validity of the ordinance in question, that we should deem the ordinance justified by considerations of public health, safety, comfort, or the general welfare. It is sufficient that the municipal council could reasonably have had such considerations in mind. If such considerations *could have* justified the ordinances, we must assume that they did justify them." 451 So.2d at 492. (Emphasis added; citation omitted). Restlawn's burden in this case "was not only to show that [its] requested change would be a reasonable one, but also that the [Parish's] classification of the property was unreasonable." *Kirk*, 373 So.2d at 605. Restlawn did not prove the latter.

The second issue that Restlawn contends demonstrates that the Council's decisions were arbitrary and capricious is that they were made without providing Restlawn with any stipulations that it could remedy to obtain approval. We have found nothing requiring the Council to provide stipulations for approval when its decision is to deny an application for rezoning or resubdivision.

Third, Restlawn suggests that the Council's decisions were arbitrary and capricious because the Property is the only property fronting on Highway 90 that is not zoned commercial or industrial. Ms. Martin testified, however, that there is at least one other property fronting on Highway 90 that is zoned residential. Further, the Council had this information before it when it denied Restlawn's Applications and nevertheless denied the Applications. As we have already discussed, the Council's actions are presumed to be reasonable, and Restlawn did not bear its burden of proving otherwise.

Fourth, Restlawn contends that the denial of its Applications results in "reverse spot zoning." "A city [or parish] purporting to act under its police powers cannot create in a large area of property zoned in one classification an island of one parcel of land relegated to another zoning classification when no rational reason exists for such a separate distinction." *Jenniskens v. Par. of Jefferson*, 06-252 (La. App. 5 Cir. 10/17/06), 940 So.2d 209 (citing *Four States Realty Co., Inc. v. City of Baton Rouge*, 309 So.2d 659, 672 (La. 1974)). The Council's decisions denying Restlawn's Applications in this case do not create a reverse spot zone. The neighborhood around the Property is zoned residential and proposed Lot C-1B, would remain zoned R-2. Rezoning proposed Lot C-1A to commercial would have the effect of creating a spot zone under the circumstances presented.

Finally, Restlawn claims that it was denied due process. This claim, however, is premised upon its contention that the actions of the Council in denying

its Applications were arbitrary and capricious, which we have already found was not the case.¹²

DECREE

For all of the reasons stated above, the decisions of the Jefferson Parish Council denying Restlawn's Rezoning Application and Resubdivision Application and the Judgement of the district court denying and dismissing Restlawn's Petition for Writ of Mandamus are affirmed.

AFFIRMED

¹² Additionally, constitutional attacks must first be raised at the trial court. See *Mary John Fam., L.L.C. v. Stevens Constr. & Design, LLC*, 24-132 (La. App. 5 Cir. 10/30/24), 398 So. 3d 1230, 1235 n.1. Appellant did not raise the due process denial claim at the trial court.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400

(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 9, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-324

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE STEPHEN D. ENRIGHT, JR. (DISTRICT JUDGE)

PIERRE W. MOULEDOUX (APPELLANT)

ROBERT T. GARRITY, JR. (APPELLANT)

MATTHEW A. SHERMAN (APPELLEE)

NICHOLAS R. VARISCO (APPELLEE)

MAILED