

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

GENEVIEVE BUTLER, PASTOR HARRY
JOSEPH, SR., RISE ST. JAMES, and THE
LOUISIANA BUCKET BRIGADE

NUMBER _____

DIV. "____"

VERSUS

ST. JAMES PARISH, the ST. JAMES
PARISH COUNCIL, and the ST. JAMES
PARISH PLANNING COMMISSION

PETITION

1. The Parish of St. James, the St. James Parish Council, and the St. James Parish Planning Commission (collectively, "St. James Parish" or "the Parish") violated the Louisiana Open Meetings Law when it met in secret to discuss and receive information on the application by Wanhua Chemical US Operations ("Wanhua") for a Land Use Permit for a proposed chemical facility in Convent, Louisiana. Louisiana's Open Meetings Law requires that "[e]very meeting of any public body shall be open to the public" unless certain limited exceptions apply. La. R.S. § 42:14(A). A "meeting" is one where a quorum, or majority, of the public body convenes on a matter over which the body has jurisdiction. The St. James Parish Council and the St. James Parish Planning Commission's May 14, 2019, meeting to receive information on Wanhua regarded a matter over which they have supervision, control, jurisdiction, or advisory power, and about which the public had a significant and compelling interest. Yet the Parish hid the invitation-only meeting from the public. The Parish did not claim any exception to the Open Meetings Law, nor did any apply. Indeed, the Parish's Director of Operations, Blaise Gravois, set up the meeting in two back-to-back sessions expressly in an attempt to avoid having a quorum of the Council or Commission present in the same room at the same time, purposefully circumventing the strictures of the Open Meetings Law. Six days after this secret meeting, the Planning Commission voted to approve Wanhua's permit.

2. “It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” La. R.S. § 42:12(A).

3. Accordingly, this Court should reverse the Parish’s May 20, 2019, decision and vacate its Land Use Permit to Wanhua.

PARTIES

4. Petitioner Genevieve Butler is a resident of St. James Parish. She lives approximately two miles from the proposed location of the Wanhua chemical facility.

5. Petitioner Pastor Harry Joseph, Sr., is pastor of the Mt. Triumph Baptist Church in St. James, Louisiana, and a resident of St. James Parish.

6. RISE St. James is a faith-based organization domiciled in St. James, Louisiana, which is focused on conservation and protection of the air, water, and environment. Members are dedicated to protecting the health and safety of residents in St. James Parish. It has members who live, work, and recreate in the area of the proposed Wanhua facility.

7. The Louisiana Bucket Brigade is a non-profit corporation domiciled in New Orleans, Louisiana, which uses grassroots action to create an informed, healthy society that holds the petrochemical industry and government accountable for the true costs of pollution. It has members statewide, including members who live, work, or recreate in the area of the proposed Wanhua facility.

8. Defendant St. James Parish is a public body under La. R.S. § 42:13(3) and is subject to Louisiana’s Open Meetings Law.

9. Defendant St. James Parish Planning Commission is a public body under La. R.S. § 42:13(3) and is subject to Louisiana’s Open Meetings Law.

10. Defendant St. James Parish Council is a public body under La. R.S. § 42:13(3) and is subject to Louisiana’s Open Meetings Law.

JURISDICTION AND VENUE

11. Jurisdiction is proper in this Court, and Petitioners have a right to bring this enforcement action pursuant to La. R.S. §§ 42:25(C), 42:26.

12. Venue is proper under La. R.S. § 42:27 which provides: “[E]nforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.” La. R.S. § 42:27(A).

LEGAL BACKGROUND

Louisiana Constitution

13. La. Constit. 1974, Art. XII, sec. 3 provides: “No person shall be denied the right to observe the deliberation of public bodies and examine public documents, except in cases established by law.”

Open Meetings Law

14. The Louisiana Open Meetings Law provides: “It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.” La. R.S. § 42:12(A).

15. Among other things, the Open Meetings Law requires that: “Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.” La. R.S. § 42:14(A).

16. La. R.S. §§ 42:16 and 42:17 discuss executive sessions; La. R.S. § 42:18 involves the legislature and legislative committees.

17. La. R.S. § 42:13(A)(2) defines a meeting as “the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.”

18. “Quorum” means “a simple majority of the total membership of a public body.” La. R.S. § 42:13(A)(4).

19. The Louisiana Open Meetings Law provides: “Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, *or any other means to circumvent the intent of this Chapter.*” La. R.S. § 42:14(B) (emphasis added).

20. “Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.” La. R.S. § 42:25(C).

21. “Any action taken in violation of [the Open Meetings Law] shall be voidable by a court of competent jurisdiction.” La. R.S. § 42:24.

22. Further, this Court may grant injunctive relief, declaratory judgment, civil penalties, and issue all necessary orders to ensure compliance with the Open Meetings Law. La. R.S. § 42:26(A)&(B).

23. “If a person who brings an enforcement proceeding prevails, he shall be awarded reasonable attorney fees and other costs of litigation.” La. R.S. § 42:26(C).

St. James Parish Code of Ordinances

24. The St. James Parish Code of Ordinances, Section 86-37, provides that any land use for a non-residential development exceeding 10,000 square feet of building area or sites 3 acres or more, as well as any industrial development that requires a state air permit, must be approved by the St. James Parish Planning Commission. St. James Parish Ord. 86-37(f).

25. The St. James Parish Code of Ordinances, Section 86-37(h), provides that the Planning Commission must consider certain factors for approval or denial of uses falling under Section 86-37(f), including the public benefits of the proposed use; the physical and environmental impacts of the proposed use on the air, water, and land; whether the public benefits of the use are commensurate with the impacts; and whether the environmental impacts may impair the parish’s ability to attract other beneficial development.

26. The St. James Parish Code of Ordinances, Section 86-37, provides that any land use for a non-residential development exceeding 10,000 square feet of building area or sites 3 acres or more, as well as any industrial development that requires a state air permit, must be approved by the St. James Parish Council on appeal. St. James Parish Ord. 86-37(f).

FACTUAL BACKGROUND

27. In 2018, Wanhua applied to St. James Parish for land use approval to construct and operate a chemical facility that will make components of polyurethane (“Land Use Permit”); specifically, Methylene Diphenyl Diisocyanate (MDI) and Ethylene Dichloride (EDC). In addition to the Land Use Permit, Wanhua’s proposed facility will require a state air permit.
28. The Wanhua facility is proposed for a 250-acre agricultural site in Convent which is currently designated as Industrial under the Parish’s Land Use Plan.
29. Wanhua’s proposed site in Convent, contiguous with the Occidental Chemical facility, is located less than one mile from Romeville and less than two miles from St. James.
30. Wanhua’s proposed facility would be a major source of hazardous air pollutants, and would produce phosgene, a poison gas with no safe level of exposure.
31. Upon information and belief, Wanhua is partially owned by the government of China.
32. Wanhua’s proposal first appeared on the agenda of the St. James Parish Planning Commission on January 28, 2019.
33. The St. James Parish Planning Commission heard public comment on the Wanhua application at its February 25, 2019, meeting and its March 25, 2019, meetings.
34. Petitioners, through undersigned counsel, submitted written comments to the Planning Commission on April 26, 2019, opposing the Wanhua proposal.
35. The Wanhua application was set on the Planning Commission’s April 29, 2019, agenda but was tabled until the May 20, 2019, meeting.
36. On May 9, 2019, Mr. Blaise Gravois, St. James Parish Director of Operations, directed Parish administrative staff to send to all of the Council and Commission members a Notice with the opening lines “Important Informational Meeting, Wanhua Chemical Application.”
37. Upon information and belief, this Notice was sent to all Councilmembers and all voting members of the Planning Commission.
38. In the Notice, Mr. Gravois stated that he and the Parish’s counsel had been meeting regularly with Wanhua and an environmental consultant, and that he “would like to inform each member on any and all information received on behalf of Wanhua application. I am offering this Informational Meeting to allow Planning Commission members and members of the Parish

Council to hear the results of these meetings and have the opportunity to ask your own Questions so everyone can be clear on the decision that has to be made.”

39. Mr. Gravois organized the May 14, 2019, meeting as two back-to-back separate sessions, from 6:00-7:00 p.m. and 7:00-8:00 p.m. Mr. Gravois indicated in the Notice that: “We cannot have a quorum of the Planning Commission or the Parish Council.” He therefore requested that the members: “Pick the 6pm or 7 pm time slot. I will close a time slot when filled and move to the other time slot as needed.”

40. Mr. Gravois’ Notice to the Parish officials stated that “this meeting is for invited guest (sic) only, not open to the public.”

41. Mr. Blaise Gravois is a public official within the meaning of the Open Meetings Law.

42. No notice of this meeting was provided to the public.

43. Upon information and belief, on May 14, 2019, this meeting of the Parish Council and Parish Planning Commission was convened.

44. The May 14, 2019, meeting was not open to the public.

45. The May 14, 2019, meeting was not purported to be, nor did it meet the requirements for, an executive session under La. R.S. § 42:17.

46. Upon information and belief, at least four Planning Commissioners and three Councilpersons attended, at a minimum, the first session of the May 14, 2019, meeting.

47. Upon information and belief, at least two Planning Commissioners and two Councilpersons attended, at a minimum, the second session of the May 14, 2019, meeting.

48. At all times relevant to this lawsuit, the Planning Commission consisted of ten members and the Council consisted of seven members.

49. Upon information and belief, the Planning Commissioners and Councilpersons at the May 14, 2019, meeting deliberated or acted on a matter over which they have supervision, control, jurisdiction, or advisory power.

50. Upon information and belief, the Planning Commissioners and Councilpersons at the May 14, 2019, meeting received information regarding a matter over which they have supervision, control, jurisdiction, or advisory power.

51. No minutes of the May 14, 2019, meeting have been provided to the public.

52. The Parish has not provided the public any information on the content of the meeting or participants in the meeting.

53. Upon information and belief, a May 22, 2019, meeting of a quorum of the Council was organized and/or held, in violation of the Louisiana Open Meetings Law.

54. Upon information and belief, the information shared at the May 14, 2019, secret meeting was necessary for the public to have sufficient notice and opportunity to provide informed comments on the Parish's decision to grant Wanhua a Land Use Permit.

55. The Council voted to approve the Land Use Permit at its May 20, 2019, meeting. The May 14, 2019, meeting was not discussed at this May 20, 2019, meeting which included the public.

THE PARISH'S VIOLATION OF OPEN MEETING LAWS

56. The St. James Parish Planning Commission violated Louisiana's Open Meetings Law § 42:14(A) when it met secretly on May 14, 2019.

57. The St. James Parish Council violated Louisiana's Open Meetings Law § 42:14(A) when it met secretly on May 14, 2019.

58. The St. James Parish Planning Commission violated Louisiana's Open Meetings Law § 42:14(B) when it used means to circumvent the intent of the Open Meetings Law.

59. The St. James Parish Council violated Louisiana's Open Meetings Law § 42:14(B) when it used means to circumvent the intent of the Open Meetings Law.

PRAYER FOR RELIEF

Upon consideration of the law and facts of this case, Petitioners respectfully request that this Court grant relief as follows:

A. Reverse or vacate the Land Use Permit that the St. James Parish Planning Commission granted to Wanhua Chemical US Operations, LLC at the May 20, 2019, public meeting;

B. Remand the decision on the Wanhua Land Use Permit application to the St. James Parish Planning Commission for further proceedings to include a public hearing on the application;

C. Alternatively, and to the extent that the May 20, 2019, Planning Commission decision to grant the Wanhua permit was merely a pro forma reenactment of a decision effectively made on May 14, 2019, void the Planning Commission's May 20, 2019, action granting Wanhua a Land Use Permit.

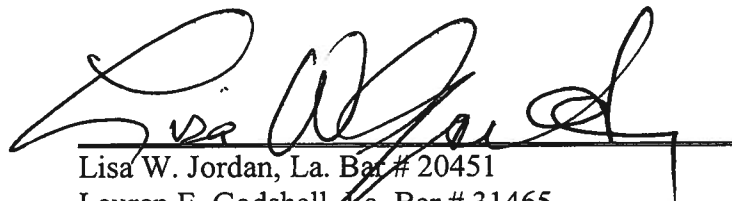
D. Declare that the St. James Parish Planning Commission and St. James Parish Council violated the Open Meetings Law;

E. Permanently enjoin St James Parish, the St. James Parish Planning Commission, and the St. James Parish Council from engaging in means designed to circumvent the intent of the Open Meetings Law;

F. Award Petitioners' reasonable attorney fees and other costs of litigation, as provided for in La. R.S. 42:26(C); and

G. Award all other relief as this Court finds equitable.

Respectfully submitted on July 15, 2019,



Lisa W. Jordan, La. Bar # 20451
Lauren E. Godshall, La. Bar # 31465
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Telephone: (504) 865-5789
Fax: (504) 862-8721

Counsel for Petitioners

Sheriff Please Serve:

Timothy Roussel, President
St. James Parish
5800 Highway 44, Second Floor
Convent, Louisiana 70723

Ryan Louque, Chairman
St. James Parish Council
2631 Highway 20
Vacherie, Louisiana 70090

Glen Millet, Chairman
St. James Parish Planning Commission
538 N. Montz Street
Gramercy, Louisiana 70052