

UNITED STATES DISTRICT COURT

for the
Eastern District of Louisiana

Civil Action No.

10-1552
SECT B MAG. 3

Summons in a Civil Action

Defendant

St. Charles Parish

v.

Plaintiff

Bayou Fleet Partnership, L.L.P.

To: (Defendant's name and address)

St. Charles Parish,
through its Parish President or Parish Attorney,
15045 River Road
Hahnville, LA 70057

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

J. Mac Morgan, 735 Crystal Street, New Orleans, LA 70124

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

LORETTA G. WHITE

Name of clerk of court

Deputy clerk's signature

MAY 25 2010

Date:

1. Subject matter jurisdiction of this Court exists pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), because this action arises under the Fourteenth Amendment to the Constitution of the United States of America and 42 U.S.C. § 1983; and, as to any non-federal claim(s), the plaintiff invokes the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

Partnership, L.L.P., and avers as follows:

NOW INTO COURT, through undersigned counsel, comes plaintiff, Bayou Fleet

COMPLAINT FOR DAMAGES AND TRIAL BY JURY

Defendant.

ST. CHARLES PARISH

Versus

Plaintiff,

BAYOU FLEET PARTNERSHIP, L.P.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ss ss ss ss ss

SECTION "A"
NO. 10-
CIVIL ACTION

SECT. B MAG. 3

10-1557 NO.

RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2010 MAY 25 PM 12:32
LORETTA G. WHYTE
CLERK

VENUE

2. Venue in this Court exists pursuant to 28 U.S.C. § 1391(a) and (b) because the defendant resides in this judicial district and the events or omissions giving rise to the claims raised herein occurred in this judicial district.

THE PARTIES

3. The plaintiff, Bayou Fleet Partnership, L.L.P., is a Louisiana limited liability partnership domiciled in St. Charles Parish.
4. The defendant, St. Charles Parish, is a local governmental entity.

THE FACTS

5. The plaintiff is the owner of four tracts of Mississippi River batture property located on the right descending bank of the Mississippi River in St. Charles Parish.
6. Three of the aforesaid four tracts of batture property are contiguous.
7. The three contiguous tracts are the P&L Tract, the Addition to the P&L Tract and the OTC Tract.
8. The fourth tract of Mississippi River batture property is located downriver from the three contiguous tracts and is known as the Old Rivarde Tract.
9. The batture property adjacent to and downriver from the Old Rivarde Tract is known as the Home Place Tract.
10. The batture property adjacent to and upriver from the Old Rivarde Tract is known as the Giambelluca Tract.
11. The Giambelluca Tract is adjacent to and downriver from the plaintiff's three contiguous tracts of batture property.

12. The plaintiff's four tracts of batture property have a combined total area of approximately eighty-seven (87) acres, with three thousand nine hundred (3,900) linear feet of frontage on the Mississippi River.

13. When St. Charles Parish adopted its Comprehensive Zoning Ordinance, the Home Place Tract, the Giambelluca Tract, the Old Rivarde Tract, the OTC Tract, the P&L Tract and the Addition to the P&L Tract were zoned B-1.

14. The B-1 zoning classification created a non-industrial batture district and permitted batture property to only be used for: (a) barge mooring (if no obnoxious odors exist), (b) those activities not related to other manufacturing or industrial activities, (c) recreation facilities, (d) restaurants, (e) river boat docks, (f) site built hunting or fishing camps, and (g) United States Coast Guard Aids to Navigation.

15. The B-1 zoning classification specifically prohibited batture property to be used for: (a) manufacturing, industrial and resource extraction activities except logging, and (b) medical waste storage, treatment or disposal facilities.

16. Before St. Charles Parish adopted its Comprehensive Zoning Ordinance, the plaintiff's batture property, the Home Place Tract batture property and the Giambelluca Tract batture property, had been used for, among other industrial uses, aggregate storage and distribution facilities, sand pit extraction, storage and distribution facilities, and shipyard facilities.

17. With the adoption of the Comprehensive Zoning Ordinance, the aforesaid uses of the plaintiff's batture became classified as non-conforming uses.

18. The Comprehensive Zoning Ordinance also established a B-2 zoning classification for batture property.

19. The B-2 zoning classification created an industrial batture district and permitted batture property zoned B-2 to be used for: (a) commercial and/or industrial port facilities; (b) sand extraction pits; (c) fueling docks and/or facilities; (d) electrical generating plants; (e) coal handling; transfer and storage facilities; (f) petroleum, petroleum by-products and storage facilities; (g) seaplane facilities; (h) milling facilities and support uses; (i) any other similar manufacturing or industrial establishment which shall adhere strictly to all state and federal mandates and which under normal operations will not be injurious to employees and the general public from health or safety factors; and (j) United States Coast Guard Aids to Navigation.

20. The B-2 zoning classification only prohibited batture property to be used for medical waste storage, treatment or disposal facilities.

21. On February 1, 1996, the owner of the Home Place Tract applied to have its batture property rezoned from B-1 to B-2.

22. The St. Charles Parish Department of Planning and Zoning recommended approval of the application to rezone the Home Place Tract from B-1 to B-2.

23. The St. Charles Parish Planning Commission recommended approval of the application to rezone the Home Place Tract from B-1 to B-2.

24. On March 18, 1996, St. Charles Parish, acting through its policy and law making body, the Parish Council, adopted an ordinance granting the application to rezone the Home Place Tract from B-1 to B-2.

25. On May 7, 1999, the owner of the Ciambelluca Tract applied to have its batture property rezoned from B-1 to B-2.

26. The St. Charles Parish Department of Planning and Zoning recommended approval of the application to rezone the Giambelluca Tract from B-1 to B-2.

27. The St. Charles Parish Planning Commission recommended denial of the application to rezone the Giambelluca Tract from B-1 to B-2.

28. On September 7, 1999, the Parish Council adopted an ordinance approving the application to rezone the Giambelluca Tract from B-1 to B-2.

29. On April 25, 2003, the plaintiff applied to have its four tracts of batture property rezoned from B-1 to B-2.

30. The St. Charles Parish Department of Planning and Zoning recommended approval of plaintiff's 2003 rezoning request.

31. Initially, the St. Charles Parish Planning Commission recommended denial of the plaintiff's 2003 rezoning request. However, the Planning Commission reconsidered its decision and recommended to the Parish Council that it approve plaintiff's 2003 rezoning request.

32. On July 21, 2003, the St. Charles Parish Council denied the plaintiff's 2003 rezoning request by voting against an ordinance permitting a rezoning of plaintiff's four tracts of batture property from B-1 to B-2.

33. On May 27, 2009, the plaintiff again applied to have its four tracts of batture property rezoned from B-1 to B-2.

34. The St. Charles Parish Department of Planning and Zoning recommended approval of plaintiff's 2009 rezoning request.

35. The St. Charles Parish Planning Commission recommended denial of the plaintiff's 2009 rezoning request.

36. On July 20, 2009, St. Charles Parish, acting through its policy and law making body, the Parish Council, denied the plaintiff's 2009 rezoning request by voting against an ordinance permitting a rezoning of plaintiff's four tracts of batture property from B-1 to B-2.

CAUSE OF ACTION NO. 1 - SUBSTANTIVE DUE PROCESS

37. The plaintiff realleges and incorporates the allegations of Paragraph Nos. 1-36 as though set forth in full.

38. Based on the aforesaid allegations, the defendant arbitrarily or capriciously engaged in reverse spot zoning, by singling out the plaintiff's four tracts of batture property for different, less favorable, treatment, than the neighboring batture property.

39. As result of said reverse spot zoning, the defendant, acting under color of state law, violated the plaintiff's federal Fourteenth Amendment substantive due process rights.

40. Accordingly, pursuant to 42 U.S.C. § 1983, the plaintiff is entitled to recover compensatory damages from the defendant, which the plaintiff estimates to be approximately One Million Four Hundred Thirty-Six Thousand and No/100 (\$1,436,000.00) Dollars, as a result of the diminution of the value of the plaintiff's four tracts of batture property, proximately caused by the defendant's violation of the plaintiff's Fourteenth Amendment substantive due process rights.

41. The plaintiff further submits that the defendant should be ordered to pay all of the plaintiff's attorney's fees and costs in this matter.

42. The plaintiff is entitled to and desires a trial by jury on this cause of action.

CAUSE OF ACTION NO. II - EQUAL PROTECTION

43. The plaintiff realleges and incorporates the allegations of Paragraph Nos. 1-36 as though set forth in full.

44. Based on the aforesaid allegations, the defendant arbitrarily or capriciously engaged in reverse spot zoning, by singling out the plaintiff's four tracts of batture property for different, less favorable, treatment, than the neighboring batture property.

45. As result of said reverse spot zoning, the defendant, acting under color of state law, violated the plaintiff's federal Fourteenth Amendment equal protection rights.

46. Accordingly, pursuant to 42 U.S.C. § 1983, the plaintiff is entitled to recover compensatory damages from the defendant, which the plaintiff estimates to be approximately One Million Four Hundred Thirty-Six Thousand and No/100 (\$1,436,000.00) Dollars, as a result of the diminution of the value of the plaintiff's four tracts of batture property, proximately caused by the defendant's violation of the plaintiff's Fourteenth Amendment equal protection rights.

47. The plaintiff further submits that the defendant should be ordered to pay all of the plaintiff's attorney's fees and costs in this matter.

48. The plaintiff is entitled to and desires a trial by jury on this cause of action.

WHEREFORE, the plaintiff, Bayou Fleet Partnership, L.L.P., prays:

- A. That the defendant, St. Charles Parish, be duly summoned and served with a copy of this Complaint and be required to appear and answer same within the time provided by law;
- B. That after all due proceedings have been had, that there be judgment rendered herein in favor of the plaintiff and against defendant in an amount of damages no less than One Million Four Hundred Thirty-Six Thousand and No/100 (\$1,436,000.00) Dollars, together with interest thereon from date of judicial demand until paid in full;

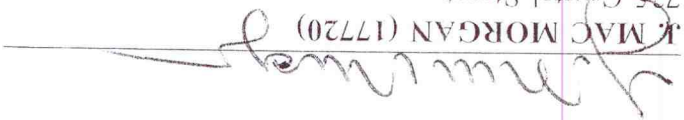
C. For attorney's fees and costs;

D. For trial by jury on all causes of action; and,

E. For such other and further relief, at law and in equity, to which the plaintiff may show itself to be justly entitled.

Respectfully submitted:

LAW OFFICE OF J. MAC MORGAN


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ATTORNEY FOR PLAINTIFF