

## **1) The Bayou Fleet Servitudes fail to properly define the Dominant Estates.**

In an attempt to create a predial servitude, the Bayou Fleet instruments define its batture as the “servient estate” and unspecified residential lots bordering numerous streets as the “dominant estates”.

Civil Code Art. 698 states a predial servitude must be for the benefit of a “distinct” parcel of property.

The Bayou Fleet instruments attempt to create a predial servitude in favor of unspecified lots bordering certain streets. This is tantamount to creating servitudes for the “general public” comprising the residents along the streets listed in the acts.

Servitudes in favor of the “general public” are typically created by way of a “legal servitude” resulting from a legislative act.

The acts filed by Bayou Fleet can only create a “conventional servitude” that should not be stretched to create a servitude in favor of the “general public”.

The servitudes reference a minimum of 23 different public streets but fail to specifically identify the alleged dominate estates located along these streets. The acts are void for “vagueness” as to the true identity and location of the dominant estates.

Moreover, there is absolutely no indication within the body of the acts as to what parameters Bayou Fleet relied upon to determine which public streets were listed and which streets were omitted. Presumably, some geographical range was employed to limit the number of streets comprising the alleged dominant estate, but the acts fail to define that range.

## **2) There is no benefit to the alleged Dominant Estates:**

According to civil code art. 646, a predial servitude is a charge on a servient estate **for the benefit of** a dominant estate.

According to civil code art. 647, there is no predial servitude if the charge imposed on the servient estate cannot be reasonably expected to benefit the dominant estate.

The only theoretical benefit to the alleged dominant estates in this case is that the future use of Bayou Fleet’s batture is being restricted by prohibiting the enumerated uses that would otherwise be available under a B-2 zoning classification. In reality, that benefit already exists by the fact that the property is presently zoned B-1, and Bayou Fleet is already prohibited from engaging in any

of the uses restricted by its servitudes. Therefore, the alleged dominant estates are not gaining anything or benefitting at all from the creation of the predial servitudes.

The servitudes serve no useful purpose to anyone except Bayou Fleet. Therefore, the only party benefiting is Bayou Fleet. [*Parish v. Municipality No. 2*, 8 La. Ann. 145 (1853) – unreasonable whims of parties, serving no socially useful purpose, may not give rise to predial servitudes.]

The dominant estate owners have no need whatsoever for the Bayou Fleet servitudes, because the current zoning classification of B-1 fully protects these owners against the very uses prohibited by the Bayou Fleet servitudes.

The Bayou Fleet servitudes, as filed, are void of any consideration or benefit in favor of the alleged dominant estates. The servitude agreements do not add anything to the already existing level of protection provided by the B-1 zone.

Instead, the instruments actually reduce the degree of protection by excluding only the uses Bayou Fleet has no use for. Bayou Fleet is attempting to “servitude” its way into a cherry picked zoning classification that has never before existed.

In essence, the grantor of the servitude and the beneficiary of the servitude are both Bayou Fleet. As such, Bayou Fleet’s batture is both the servient estate (the one burdened by the servitude) and the dominant estate (the one benefited by the servitude). In that case, the concept of “confusion” should extinguish the servitude, as the dominant estate and the servient estate must be owned by different parties.

### **3) The alleged Dominant Estate owners are not parties to the instruments filed:**

The Bayou Fleet servitudes are couched as “Acts of Dedication” of the predial servitude. To be a true dedication, another party has to “accept” the dedication.

Here, there is no opportunity for the alleged dominant estate owners to “accept” the dedication of the servitude. As filed, the acts creating the servitudes are classified as conventional servitudes (created by contract) because they do not qualify as natural servitudes (created by nature) or legal servitudes (created by legislative act).

As conventional servitudes, the owner of the dominant estate must be a “party” to the contract creating the predial servitude, otherwise the act is not a contract.

**4) Bayou Fleet is attempting to limit the police power of the Planning Department**

In essence, the role and function of the Planning and Zoning Department in policing the permitted and prohibited uses within the various zoning classifications is being usurped by Bayou Fleet and foisted upon the private citizens who own the alleged dominant estates.

This is being done without even allowing the citizens to be a party to the act. Bayou Fleet is attempting to use a private unilateral act to replace a public body's ability to govern property uses within established zoning districts.

In the event the servitude is violated by Bayou Fleet, it would be incumbent upon the "general public/dominant estate owners" to take legal action against Bayou Fleet. Presently, that right and responsibility rests with the Planning and Zoning Department.

**5) The Bayou Fleet servitudes can be eliminated by prescription:**

Civil Code Art. 706 does permit "negative" predial servitudes whereby the owner of the servient estate agrees to prohibit certain uses of his property.

However, as the 5<sup>th</sup> Cir. Court of Appeal recognized in *Meadowcrest Center v. Tenet Health System*, 902 So.2d 512 (La. App. 5<sup>th</sup> Cir. 2005), negative servitudes can be cancelled after ten years of an occurrence of an event contrary to the servitudes prohibited use.

Civil Code Art. 3471 does not allow Bayou Fleet to waive the prescriptive period or make the prescriptive period longer. Therefore, the classification of the servitude as "perpetual" does not make it exempt from cancellation on the basis of prescription.

**6) The alternative classification as "restrictive covenants" is flawed as well:**

As a precautionary, backup measure, Bayou Fleet attempts to incorporate an alternative classification of "restrictive covenants" into its recorded instruments.

According to civil code art. 775, restrictive covenants are defined as charges imposed by the owner of immovable property "in pursuance of a general plan governing building standards, specified uses and improvements."

The plan must be feasible and capable of being preserved. Such restrictions inure to the "benefit of all other grantees under a general plan of development."

In this case, there is no "general plan of development". Therefore, a necessary component of a restrictive covenant is missing.

Moreover, enforcement of Bayou Fleet's restrictive covenants is a major concern. The remedy of the "grantees" to prevent a violation of the restrictions is to file an injunction against the party committing the violation.

Once again, the burden of enforcing the restriction is being usurped by Bayou Fleet from the Planning and Zoning Department and forced upon the general public living along the streets listed in the Bayou Fleet's acts.

Furthermore, just as Bayou Fleet has unilaterally "created" the restrictive covenants, it could just as easily file another unilateral act to "amend or rescind" the restrictive covenants.

Equally concerning is the potential cancellation of the restrictive covenants as a result of prescription. If classified as "restrictive covenants" rather than as "predial servitudes" the restrictions are subject to being cancelled two years after a violation of the restrictions occurs. Two years from the day the violation first occurs, Bayou Fleet's batture will be deemed to be freed from the restrictions.

Therefore, it will be incumbent upon the citizens living along the 23 listed streets to constantly police Bayou Fleet's property to insure the restrictive covenants are not being violated.

**7) The Bayou Fleet instruments create a dangerous precedent:**

If Bayou Fleet's servitudes/restrictions are accepted as the justification for rezoning its batture from B-1 to B-2, a dangerous precedent will be established that will threaten the integrity of the entire zoning classification system. Countless other landowners could follow Bayou Fleet's path by self-imposing servitudes and restrictions on their property as a way of reaching a more intensive zoning classification that would otherwise have been off limits to them.

**8) Miscellaneous objections:**

No certificate of authority is attached to the acts indicating how Robin Durant was "duly authorized" to execute the acts.

The acts are not dated.