

MAY 15 1970

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1969-70

Fairhope Single Tax Corporation,
a Corp.

1 Div. 554

v.

George J. Mitchell, et al.

Appeal from Baldwin Circuit Court

PER CURIAM.

This appeal is by the property owner and lessor,
Fairhope Single Tax Colony, from an order of the Circuit Court
of Baldwin County in the disbursement of funds paid into
court following a condemnation proceeding.

2.

An application dated February 1, 1958, by George J. Mitchell to owner culminated in the lease of subject property, known as the Old Casino property, located on Mobile Bay, for a term of ninety-nine years from date.

This lease and agreement, insofar as its terms are germane to this appeal, provides substantially as follows:

1. That the lessee shall pay to the lessor in semi-annual installments "the annual rental value of said land exclusive of his improvements thereon, to be determined by the said Corporation (appellant) through its Executive Council or Board of Directors, under its avowed principle of so fixing the rentals of its lands as to equalize the varying advantage of location and natural qualities of different tracts and convert into the treasury of the Corporation for the common benefit of its lessees, all values attaching to such lands, exclusive of improvements thereon. . . ."

(Par. Added);

2. That the appellant would pay all taxes on the land and would credit on the rent due any taxes paid by the lessee on the improvements and personal property located on the land;

3. That the lessor agreed that no part of the rents paid by the lessee would be appropriated as dividends to its members or any other person, but that all rents would be administered as a trust fund for the equal benefit of those leasing its lands;

4. That all lessees would be treated equally whether they were members of the corporation or not;

3.

5. That time was of the essence of the lease and agreement, and all rents not paid within ninety days would be subject to interest at 8% per annum; that the lessor would have a lien on all improvements to secure the payment of rent or any other indebtedness by the lessee to the lessor; that the lessor would be authorized to sell the improvements for the satisfaction of any rent over six months in arrears; and that the sale of the improvements under legal process would work a forfeiture of all rights under the lease;

6. That in the event of dissolution of the corporation and a division of its assets among its members, the lessee, if a member, would be entitled to have the land which he leased included in his portion under certain conditions; and if not a member, could acquire title to the land by paying to the corporation its actual value exclusive of improvements;

7. That the lessor reserved the right to resume possession for public purposes only on payment of the appraised value of the improvements; and

8. That the lessee was prohibited from assigning the lease except to persons acceptable to the lessor.

The application states in substance that the lessee understands the purpose of the Single Tax Corporation to be to prevent anyone profiting from the holding of its land, other than by bona fide use of the same. It provides for the procedures to be had in the event of a disagreement as

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to the application of those principles in the event of a transfer by the lessee and recognizes that the corporation shall have preserved to it all value due to demand for the land exclusive of improvements; and the applicant pledges that he will not oppose the full application of the principles set forth in the Constitution of the corporation.

The condemnation proceeding was filed in the probate court by the City of Fairhope, a municipal corporation, and proceeded routinely to judgment with an award by the commissioners of \$24,750. Lessees (appellees here) appealed to the circuit court requesting a jury trial. This resulted in an award for \$25,000 which was paid into court.

Thereafter appellant, lessor, filed a claim for the entire amount, asserting that the lease, at the time of the filing of the application to condemn and at the time of the taking, was "void and of no force and effect in that the Respondents George J. Mitchell and Barbara Vallas Mitchell had defaulted in the payment of rents due under the terms and provisions of said lease."

The lessees filed a pleading entitled Answer and Claim. Here the contention regarding nonpayment of rent and forfeiture of the lease was denied. The claim was here asserted for the entire \$25,000 based upon construction that under the terms of the lease the owner (appellant) held title to the property as a trustee for the benefit of lessees.

The court, without a jury, heard the evidence and on May 14, 1968, decided the issues as follows:

"FINAL JUDGMENT:"

"This cause coming on to be heard upon the claim of Fairhope Single Tax Corporation, and the claim of George J. Mitchell and Barbara Vallas Mitchell, and the testimony of the witnesses heard ore tenus in open Court, and the Court having considered the same, it is, therefore, ORDERED, ADJUDGED AND DECREED by the Court as follows:

"1. That the said George J. Mitchell and Barbara Vallas Mitchell, shall have and recover the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00) as compensation for their leasehold interest and for the value of the improvements situated thereon.

"2. That the said Fairhope Single Tax Corporation shall have and recover the sum of TEN THOUSAND DOLLARS (\$10,000.00) as and for its interest in said lands.

"3. That the remaining costs of these proceedings be prorated between Fairhope Single Tax Corporation and the said George J. Mitchell and Barbara Vallas Mitchell on the basis of their recovery in this cause, being two-thirds to be paid by George J. Mitchell and Barbara Vallas Mitchell, and one-third to be paid by Fairhope Single Tax Corporation.

6.

"DATED at Bay Minette, Alabama, this
14th day of May, 1968.

"/s/ Telfair J. Mashburn
Circuit Judge.

"Filed: 5/14/68

"Alice J. Duck, Clerk"

Appellant here makes two assignments of error. The first charges error in that part of the final judgment awarding tenants \$15,000 "as compensation for their leasehold interest and for the value of the improvements situated thereon."

The second assignment was the award of \$10,000 to appellant for its interest in the lands.

We first consider the motion of appellees to dismiss the appeal. The contention is made that the transcript was not timely filed in this court. We do not agree. The certificate of the official court reporter filing the transcript of the testimony is dated November 14, 1968. Sixty days would therefore expire on January 13, 1969. The thirty-day extension order signed by the trial judge would expire on February 12, 1969. The transcript was filed with the clerk of this court on February 3, 1969, and was therefore timely filed.

The motion to dismiss is overruled.

Appellant corporation was organized under the authority of Title 10, Article 9, § 168, 1958 Recompiled Code of Alabama. Its legality was upheld by this court in Fairhope Single Tax Corporation v. Melville, 193 Ala. 289, 69 So. 466.

7.

Apparently, all of the leases contained uniform provisions for payment of the annual rental value of said land exclusive of improvements thereon. The rent was subject to adjustment as fixed by the board of directors.

The lessee had purchased from a former tenant, Joseph L. Collins, for a stated consideration of \$13,600.59, the existing lease on this property, together with the buildings and improvements thereon erected. The purchase was concluded prior to the execution of the current lease dated April 18, 1958.

As we have already indicated, the owner corporation contends the lease was void and of no effect. The court, in its final judgment, made no specific ruling on this question, other than to make an award to the lessees for "their leasehold interest" and for "the value of the improvements situated thereon." The evidence presented on this question was extended. Dr. C. A. Gaston, secretary, testified that appellee was indebted to the owner for rent due under his lease on March 2, 1967, indicating the sum to be \$197.27. There was correspondence between the parties, telephone calls and personal conferences. Payments were due twice a year, and credits were allowed for any taxes paid. It appears that an informal and somewhat friendly arrangement existed over a period of one or more years. The last payment, a check for \$200 was returned in 1967 because the condemnation proceeding had already begun. Appellee, George J. Mitchell, testified that Dr. Gaston never did ask him to leave the

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property or to evict him in any fashion. He also testified that Dr. Gaston accepted his agreement to pay \$100 a month until he caught up with the back rent.

The trial court saw and heard the witnesses. Its determination in this regard should not be disturbed.

There was no breakdown on the award to appellees. It is impossible to here determine if the court gave nominal damages for the leasehold interest or \$15,000. The same is true as to the award for improvements. There was evidence by a building contractor, R. F. Paul, that the buildings alone had a value of \$15,000, not to include three bowling alleys valued at \$6,000.

There was also evidence by tenant-lessee Mitchell, unobjected to by counsel for appellant, as follows:

"Q. Doctor Mitchell, what, in your opinion
is the lease hold - - The reasonable
market value of the leasehold - interest
that you held under the Fairhope Single
Tax lease?

"A. \$23,000.00."

The evidence was adequate to uphold the findings of the court in its award to appellees. If owner-lessor was dissatisfied with the award to appellees or with the form of the final judgment, it should have been presented to the trial court for correction. No such procedure was here undertaken. Shaw v. Knight, 212 Ala. 356, 102 So. 701.

We feel the judgment and award to both parties should be affirmed. Moreover, we do not feel that the issue or theory of "no value to the leasehold" was presented to or decided by the trial court. In brief, counsel for appellant urges a decision on this question "in view of the increased use of the power of eminent domain by municipalities"

Here the question was not included in the pleadings and only indirectly mentioned in the final award.

"The general rule is that the appellate court will review only questions that are raised by the record. This rule is premised on the doctrine that the trial court should first have the opportunity to rule on all points. The duty of an appellate court is to review the action of the lower court to ascertain whether or not error was committed; it is not to entertain any issue whatsoever that parties wish to raise. All reviewable matters stem solely from the record. . . ."

Head v. Triangle Construction Company, 274 Ala. 519, 522, 150 So. 2d 389.

The final judgment of the trial court is affirmed.

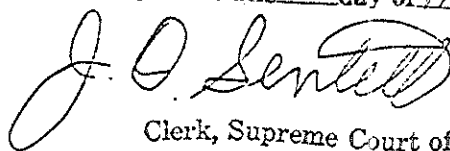
The foregoing opinion was prepared by J. Edgar Bowron, Supernumerary Circuit Judge, and adopted by this Court as its opinion.

AFFIRMED.

Livingston, C. J., and Simpson, Coleman, Bloodworth, and McCall, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 15 day of May 19 70

A handwritten signature in cursive script, reading "J. O. Sentell". The signature is written in dark ink and is positioned above the printed name of the signatory.

Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 69-70

1st Div. No. 554

To the Clerk ~~Register~~ of the Circuit Court,
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
Fairhope Single Tax Corporation, a Corp., Appellant,
and
George J. Mitchell, et al., Appellee.s,
wherein by said Court it was considered adversely to said appellant, were brought before the
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the
15th day of May, 19 70, ~~affirmed said cause, in all respects, and~~
~~ordered that appellant~~ denied appellees' motion to dismiss and affirmed
said cause, in all respects, and ordered that the appellant, Fairhope
Single Tax Corporation, a Corporation

and Norborne C. Stone, Jr. and
John Earle Chason,

sureties for the costs of appeal, pay the costs of appeal in this Court and in the Court below,
for which costs let execution issue.

~~It is further certified that, in executing that said parties have received their rights of execution~~
~~under the laws of Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Supreme
Court of Alabama, this the 15th day
of May, 19 70
J. O. Sentell
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 69-70

1st Div., No. 554

Fairhope Single Tax Corporation,

a Corporation

Appellant,

vs.

George J. Mitchell, et al.
Appellee.

From Baldwin Circuit *Court.*

No. 7669

**CERTIFICATE OF
AFFIRMANCE**

The State of Alabama,

FILED

County.

} *Filed*

this MAY 18 1970
day of 19

ALICE J. DUCK

CLERK
REGISTER

Alice J. Duck

CITY OF FAIRHOPE, ALABAMA,
A Municipal Corporation,

Petitioner,

vs.

FAIRHOPE SINGLE TAX
CORPORATION, A Corporation
and GEORGE J. MITCHELL and
BARBARA VALLAS MITCHELL,

Respondents.

X
X
X
X
X
X
X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

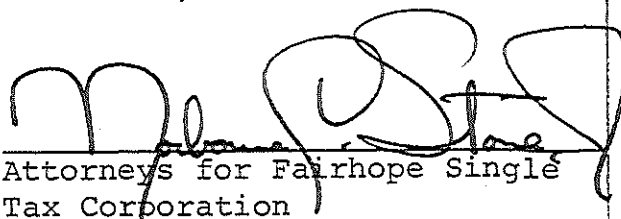
20.7669

NOTICE OF APPEAL

Comes now Fairhope Single Tax Corporation, by its attorneys and gives notice of appeal to the Supreme Court of Alabama from the judgment of the Circuit Court of Baldwin County, Alabama rendered in the above styled cause on the 14th day of May, 1968.

CHASON, STONE & CHASON

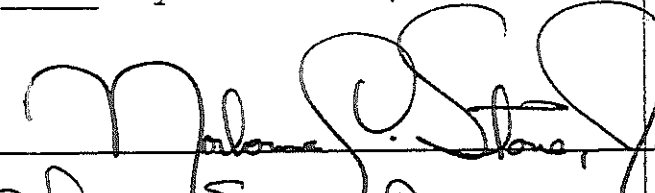
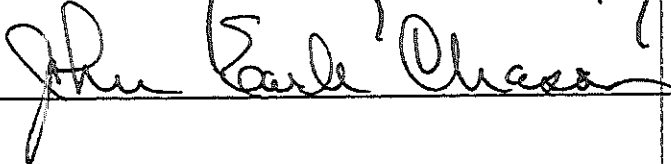
By:


Attorneys for Fairhope Single
Tax Corporation

SECURITY FOR COSTS

We, Norborne C. Stone, Jr. and John Earle Chason, do hereby acknowledge ourselves, separately and severally, as security for the costs of said appeal.

Witness our hands this 21st day of October, 1968.

Taken and approved this 21

day of October, 1968.


Clerk, Circuit Court of Baldwin County, Alabama.

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7669

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein CITY OF FAIRHOPE, ALABAMA, A Municipal Corporation

was plaintiff, and FAIRHOPE SINGLE TAX CORPORATION, A Corporation and GEORGE J. MITCHELL and BARBARA VALLAS MITCHELL,

was Defendants as fully and completely as the same appears of record in said Court.

And I further certify that the said Fairhope Single Tax Corporation did on the 21st day of November, 1968, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Norborne C. Stone & John Earle Chason as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 21st day of October, 1968

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

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FILED

APR 12 1968

ALICE J. DUCK CLERK
REGISTER

CITY OF FAIRHOPE, A Municipal
CORPORATION,

PLAINTIFF,

VS.

FAIRHOPE SINGLE TAX CORPORATION,
A Corporation, and GEORGE J.
MITCHELL, ET AL.,

DEFENDANTS.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA. AT LAW.
NOVEMBER 13, 1967.

MR. STONE: I would like to introduce at this time
a copy of the lease from Fairhope Single Tax Corporation to
Doctor George J. Mitchell, dated April 18, 1958, as Fairhope
Single Tax Corporation's Exhibit 1.

MR. OWENS: I have no objections to that.

MR. STONE: We also introduce a copy of application
for lease of land signed by Doctor George J. Mitchell - - -

MR. OWENS: I have no objections to that - -

MR. STONE: - - - as Fairhope Single Tax Corporation's
Exhibit 2.

DOCTOR C. A. GASTON, A WITNESS FOR THE DEFENDANT, FAIRHOPE
SINGLE TAX CORPORATION, BEING FIRST DULY SWORN, TESTIFIED AS
FOLLOWS:

Examination by Mr. Stone.

Q. Is this Doctor C. A. Gaston?

A. Yes sir.

Q. Are you an officer and agent of the Fairhope Single Tax Corpora-
tion?

A. I am.

Q. What is your capacity with that Corporation?

A. Secretary.

Q. How long have you been Secretary?

A. Since 1937.

Q. Were you Secretary at the time of the execution of the lease
involved in this proceeding and at the time of the receipt

of the receipt by the Corporation of the Application which has been introduced in evidence - - Application of Dr. George Mitchell?

A. Yes sir.

Q. On March 2, 1967, Mr. Gaston, was George J. Mitchell, the lessee in that lease, indebted to Fairhope Single Tax Corporation?

A. Yes sir.

Q. For what?

A. Rents due.

Q. Under the terms of the lease?

A. Rents due and accrued penalties under the terms of the lease.

Q. He was then in default under this lease on that date?

A. Yes sir -

MR. OWENS: Object, as irrelevant, incompetent and immaterial.

Q. Was that for rent due under the lease?

A. Yes sir.

THE COURT: How much was he due?

MR. STONE: It is immaterial.

THE COURT: It is going to be your argument because he was in default he has forfeited any rights?

MR. STONE: Yes, that and other reasons; this is not the only hook that we are hanging our hat on.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Doctor Gaston, how much was Doctor Mitchell in default as unpaid rental on January 1?

A. Rent due as of March 21, 1967 - -

Q. - - That wasn't my question. I said: How much did he owe Fairhope Single Tax Corporation on January 1, 1967?

MR. STONE: Object to January 1. The date of the filing was March 2, 1967.

THE COURT: What is the difference in him

testifying as to January 1st. and March, if this was filed in March?

MR. OWENS: I think Mr. Stone's question was how much was he in default on January 1st.

THE COURT: He didn't ask him that - - -

Q. How much rent was due on March 21, 1967?

A. There was the 1966 rent unpaid, \$197.27 and the rents due for the first half of 1967 and this was an additional \$420.40.

Q. Doctor Gaston, this rent that you are speaking of that was due for the year 1967- -

MR. STONE: For 1966.

MR. OWENS: 1967 - that was \$420.46 and that was for the first six months of 1967?

A. No, that included the \$197.00.

Q. I'm asking you if that \$420.00 that you testified was due for the first six months of 1967?

A. That included the 1966 rent that was in default of \$197.27.

Q. Was that due from 1966?

A. Yes sir.

Q. Is the rest of the figure for the first six months of 1967?

A. Yes.

Q. You have a 90 day grace period in your lease - -

A. - - 90 day grace period, yes.

Q. And that 90 day grace period would have extended past the time of the filing of the complaint?

A. The \$197.27 was already in default.

Q. That rental was part of an amount which was due on June 1, 1966, is that correct?

A. That is correct.

Q. How much?

A. I don't have that figure with me.

Q. Do you know the rental on this particular property for six months for 1966?

A. I don't have it in my head; I think we furnished the statement.

Q. Was \$700.00 for the year 1966 about correct?

A. I don't like to testify to something that I don't have at hand.

Q. Do you remember having correspondence with Doctor Mitchell concerning the rent which was due for the last half of 1966?

A. I recall correspondence with Doctor Mitchell respecting his account.

Q. All right, sir -

A. - - I think I would recognize any letter that I have written him.

Q. Did you have discussion with Doctor Mitchell from time to time concerning the rental due for the last half of 1966? - -
- - telephone conversations?

A. I have no doubt I did several times - I recall we discussed the matter over the 'phone.

Q. All right - Now did you, from time to time, extend to Doctor Mitchell, during the last half of 1966, an extension

A. I don't recall - - Yes, if he met certain conditions.

Q. All right - and after the first of the year - as late as January 19th. you credited him with his advalorem taxes on that bill?

MR. STONE: For what year? - - Ask him that to keep; the record straight.

MR. OWENS HANDS WITNESS A LETTER TO READ.

Q. Is that a letter written by you, sir?

A. Yes sir.

Q. You wrote that?

A. Yes sir.

MR. OWENS: If it please the Court, I would like to introduce a letter from Doctor Gaston to Doctor Mitchell, and have it marked Mitchells' Exhibit 1.

Q. Now, Doctor Gaston, Fairhope Single Tax has a provision of what you do in case of forfeiture - -

MR. STONE: Object to that; the lease speaks for itself and is the best evidence and it is in evidence.

THE COURT: Overrule the objection.

MR. STONE: We except.

A. Yes sir.

Q. Did you, as Secretary of the Corporation, or did the Corporation, initiate any proceedings under the terms of the lease to put Doctor Mitchell out of possession?

A. We, on several occasions had - - Yes, I believe at one time we had put the advertisement in the paper.

Q. When was that? - - - That wasn't at the end of 1966, was it, Doctor Gaston?

A. I don't recall.

Q. Do you recall whether or not you took any action at the end of 1966 to put him out or to oust him in any fashion by exercising your rights under the lease?

A. I believe it was at the time he agreed to pay the \$200.00 a month as stated in the letter and we didn't go ahead.

Q. Now how long has Doctor Mitchell been leasing, or been lessee of this property over all?

A. What is the date of the lease - - April 18, 1958 we issued the lease to Doctor Mitchell.

Q/ From time to time this rent, particularly while Howie was under contract, in default?

A. That is right.

Q. From time to time during the period of this lease the Fairhope Single Tax permitted the rent to become delinquent for two or three years, has it not?

MR. STONE: We object.

THE COURT: Overrule the objection.

MR. STONE: We except.

A. I don't recall just how long, but I feel quite sure that Doctor Mitchell was kept informed as to the condition of the account, either by direct communication or sending him a copy of the statements that went to Mr. Howie.

Q. That is not answering my question. I asked you if, did not, from time to time during the lease, the Fairhope Single
1 Tax Corporation allowed the rental to become delinquent for as long as two or two and one half years?

MR. STONE: We object.

THE COURT: Overrule the objection.

MR. STONE: Except.

A. I could not state exactly how long we let it get in arrears
- - We did let it get in arrears.

Q. And you would accept the payments from Doctor Mitchell
o when it was in arrears, is that right?

A. That is right.

Q. All right - Now Doctor Gaston, you don't have any of your figures with you on the amount of rental or any of those records?

A. No sir?

A. No sir.

Q. Do you recall giving some testimony - -

A. - - - The statement that went out from our office on March 21, 1967, showed a balance due, 1966, rent \$197.27, accrued penalty to date \$56.05, making of total of - - exclusive of the first half of 1967 rent, making a total amount due at that time \$674.23.

Q. You sent him that bill at that time?

A. Yes sir.

Q. All right - you also received a check shortly thereafter
1 which you returned on advice of Counsel, did you not?

A. Yes sir.

Q. That was sometime after you submitted the bill?

A. Yes sir.

Q. That bill was submitted to Doctor Mitchell for that amount on March 21, 1967?

A. Yes sir.

Q. Now you do remember giving testimony up here at my request sometime last year?

A. Yes sir.

Q. Do you remember it was taken before Mrs. Dusenbury right over here?

A. Yes sir.

Q. At that time you brought the amount of rental paid through the years?

A. Yes sir.

Q. And stated the retn, etc?

A. Yes sir.

Q. Do you remember me asking you at that time how much the rental was per month on the Casino property for the year 1967, and you stating to me : The rent was \$840.29?

A. I don't recall what I stated it was.

Q. You don't recall any of that - any of the amounts that you stated at that time?

A. Yes.

Q. But the rental has been paid all through the years of what approximate amount, Doctor Gaston? - - Do you remember that off-hand?

A. No sir.

Q. Are you a member of the Committee that fixes the rent for the Fairhope Single Tax Corporation?

A. No sir.

Q. Do you know how the rent of the Fairhope Single Tax Corporation is figured?

A. Yes.

Q. How is it figured?

A. It is figured on the basis of the annual rental value of the

land. As to the method of calculation, it is figured on Street frontage basis and depth factor and it is also based on mathematical basis.

Q. All right - do you remember, sir, your statement - - Fairhope Single Tax Corporation's statement for 1966?

A. Yes sir.

Q. This was prepared by you and sent to the various people involved?

MR. STONE: May I see that before you examine the witness further.

MR. OWENS: Yes sir.

REPORTER'S NOTE: Mr. Owens hands Mr. Stone paper.

Q. You can identify that as a report?

A. Yes sir.

MR. OWENS: Offer this as Mitchells' Exhibit 2.

MR. STONE: What is the relevancy of that?

MR. OWENS: The materiality is this: Part of our allegations concerning the nature of the business as set forth and this particular report is offered to show the nature of the business - to show the nature of the expenditures and other material which I was going to ask him about, which is calculated in the report.

THE COURT: How does that affect me?

MR. OWENS: This is offered as evidence as a part of the inherent nature of the Single Tax Corporation - how they figure their rent and the other things and we feel that it is material to the record.

MR. STONE: I have not had a right to read the whole thing; I notice a part of it is a financial statement - our rent receipts was so much-- It seems to me to be a report to the Stockholders type of think. I just think it is irrelevant. Who are the new members - - We lost two of the highly valued members, etc. I think it is irrelevant, incompetent and immaterial and contains a lot of matter and material that can't be material.

MR. OWENS: Admittedly it contains matters not pertinent to this hearing, but it is offered in its entirety to the parts that are material and we submit certain parts are material.

THE COURT: OVERRULE the objection.

MR. STONE: We object to the introduction and except to the Court's ruling.

MR. OWENS: We introduce this as Mitchells' Exhibit 2.

Q. Doctor Gaston, is the Fairhope Single Tax Corporation have any stock-holders as such?

A. Fairhope Single Tax is non-stock and non-profit.

Q. Organized for the benefit of the members?

MR. STONE: Object to that. Doctor Mitchell has raised no objection to the Fairhope Single Tax to rent the property; he signed an application to rent the property - that is a legal question as to the corporate structure of Fairhope Single Tax.

THE COURT: That is a part of his bill, that it was organized for the benefit of the lessees. I overrule the objection.

MR. STONE: We except.

Q. You have voting members, do you not?

A. Yes sir.

Q. These members pay how much to become a member?

A. \$100.00.

Q. Also sign an affidavit that they expect no monetary return?

A. Yes sir.

Q. How many leases do you have, Doctor Gaston?

MR. STONE: We object to all of this line of questions.

THE COURT: It looks to me that you are going way-afield; what difference does that make?

MR. OWENS: Withdraw the question.

Q. Directing your attention to this part of your 1966 Fairhope Single tax report, beginning with the 1966 rent, ranging from high of \$445.55 on large lots and through the remainder of that, did you make those calculations, Doctor Gaston?

A. Yes sir.

Q. Now in that particular statement, you figured the rent charged and/^{the}presumed market price for the unimproved value of the property that you are mentioning here - What ratios did you use in that figure, Doctor?

A. That was based on assumed return of 6% - I believe on the net.

Q. 6% on the net what?

A. Value.

Q. All right - how did you arrive at the value?

A. My recollection is that I arrived at the value by - - This refers to the 1967 rent charging.

Q. Does this refer to the 1966 rent?

MR. STONE: We object to "on comparable pieces of property, and to save our objection, we want to object to any questions directed through this Mitchell Exhibit 2 to this witness.

THE COURT: Overrule the objection.

MR. STONE: Except.

A. I would have to go and review my figures on that, but just on the basis of recollection, deducting or off-setting the value by the amount of taxes we had to pay to the State and County and Municipality on the land to arrive at a net return.

Q. Read that paragraph and tell us how you figured that?

MR. STONE: Object to him reading from the instrument; it is in evidence.

MR. OWENS: I am not asking you to read out loud - Refresh your memory.

THE COURT: I would just like to know where you're headed.

MR. OWENS: In this particular report - -

THE COURT: What difference does it make how he arrived at the rent?

MR. OWENS: If he figured the value of Fairhope Single Tax Corporation based on the rental, I would like for him to do it - -

MR. STONE: This question is going outside of Doctor Mitchell's lease.

THE COURT: Is it going outside his claim?

MR. STONE: That can be no stronger than the provisions in his lease.

THE COURT: He has a claim under his lease?

MR. STONE: Yes sir, that is right.

THE COURT: I have gone this far - it looks like to me you are going in left field. I overrule the objection though.

MR. STONE: We except.

Q. Doctor, do you know how much the front footage on this particular lot is on the bay?

A. No sir.

Q. Would 155 feet refresh your recollection?

A. 155 feet on the bay - yes sir. You said the amount of frontage?

Q. Yes?

A. Yes sir.

MR. STONE: May it please the Court, is presume Mr. Owens is getting ready to go into values of the property; the value has been determined by the jury; the valuation of the land and the improvements have been determined at \$25,000.00 - if he wants to determine the value of the improvements, if he

has some idea of the value of the improvements to prove by Doctor Gaston, he has a right to prove that, but the land, No - under this legal instrument which is in evidence - -

MR. OWENS: I don't understand that there is a provision where the Fairhope Single Tax Corporation can take over for improvement - -

THE COURT: If I have an instrument with you providing for payment at certain times or you stand in forfeit and I permit you from time to time to go past that time, I don't think I can come in at a later date and say: "I'm going to forfeit it now".

MR. STONE: We will get to that later.

THE COURT: I'm trying to see what he is trying to show what his man is out, so I overrule the objection. Go ahead.

MR. STONE: Except.

Q. Getting back to the rental - - Fairhope Single Tax Corporation's rental was not necessarily the market rental, was it Doctor Gaston?

A. We figured that it is the market rental.

Q. In your report that you made in 1966 you state that you had not been following such a policy?

A. We had not been collecting the full amount of rent.

Q. In many instances the rental which the Fairhope Single Tax Corporation charged has not been the current market rental of the property involved, is that correct?

A. It was under the current value.

Q. The rental that you received down there, tell us generally how they are expended?

MR. STONE: We object to that.

THE COURT: Sustain the objection.

MR. OWENS: Except.

Q. As a part of this rental are sums paid for improvements on the properties of the Corporation? - - By improvements I mean Street frontage?

MR. STONE: Object to that.

THE COURT: Sustain the objection.

MR. OWENS: Except.

MR. OWENS: May I state for the record what I propose to prove by this line of questioning?

THE COURT: Yes.

MR. OWENS: By this line of questioning I anticiapte showing to the Court that the sums received from rent are expended in various ways so that the entire property of all of the Lessees benefit by expenditures made for Street improvements.

THE COURT: What does that have to do with this?

MR. OWENS: One of the issues we set up is that Doctor Mitchell was one of the Lessees benefitting by the rents paid by the other lesseess.

THE COURT: What does that have to do with this?

MR. OWENS: Under the pleadings we are taking this as if the relationship between Doctor Mitchell and this Corporation have been involuntarily dissolved; we are taking the position that insofar as his relationship with the Corporation is concerned, the Corporation might have been dissolved; we are taking the position that he, in finding out what he is entitled to under the terms of not only the lease, but of the application and the law which has been set forth already by the Supreme Court, the Corporation is, in effect, dissolved so far as he is concerned; his relationship as a benefit is taken away from him.

THE COURT: Is that the Corporation's fault?

MR. OWENS: NO and neither is it Doctor Mitchell's fault.

THE COURT: If my land is condemned by the Court my relationship with the land is dissolved - What I'm getting at, I don't see why we have to go into what the Corporation does with the money they take in from rents; that is what I sustained the objection to.

MR. OWENS: My question is: What do they use it for, generally?

THE COURT: I can't see that; you can take an exception to my ruling.

MR. OWENS: I thought I had excepted to both.

Q. Do you, Doctor Gaston, or does the single tax Corporation use rentals or any portion thereof, comingling this rental for expenses or expenditures of such things as street improvements, whereby Single Tax Property is improved?

MR. STONE: Object, as irrelevant, incompetent and immaterial. We have already objected to the same question and it has been sustained.

THE COURT: I sustain it again.

MR. OWENS: Except.

Q/ One other question, Doctor Gaston. Who assesses the property of the Lessees?

MR. STONE: Object to that as irrelevant, incompetent and immaterial.

THE COURT: Overrule the objection.

MR. STONE: Except. Does he mean what Corporation or individual?

THE COURT: I think he is showing that they come up and assess the land - -

MR. STONE: I don't understand the purpose.

THE COURT: I don't either and I'm overruling the objection.

A. The Fairhope Single Tax Corporation assesses the land.

Q. Also Doctor Mitchell's improvements?

A. That is right.

Q. You, as Secretary, fix a value upon the improvements?

A. We protested the assessed value. (page 13)

Q. Just answer the question?

A. Fairhope Single Tax Corporation is agent for its Lessees in assessing the improvements.

Q. The rental including - The rental included the taxes for the property?

A. Both on the land and on the improvements and personal property.

Q. In Doctor Mitchell's case after making an assessment and fixing a value on the improvements, this was charged as a part of the rent that you billed him for?

A. Had nothing to do with the improvements; No sir. The rent was based on the unimproved value of the land.

Q. Your gross rental included the bill for taxes, did it not?

A. The agreement was, that is all stated in the lease, the Corporation's responsibility with respect to the taxes - Lessee's taxes - it has nothing to do with our fixing the rent. If the land was wholly unimproved, the rent would have been the same, if there had been no buildings on it.

Q. The Fairhope Single Tax Corporation, acting through you, assessed the improvements?

A. Yes sir.

Q. After assessing the improvements, they billed the rent as a part of the taxes - the taxes as a part of the gross rent, is that correct?

A. The improvements - - Taxes on the improvements has nothing to do with the rent whatever. We accept it in payment of rent in accordance with the terms of the lease; we accepted it as payment on the rent - the taxes paid by the Lessee and that is provided for in the lease - credit on the rent, yes.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

Q. Doctor Gaston, referring to Mitchells' Exhibit 1, and your statement there to Doctor Mitchell that

he would pay all that is due on this year's - referring to 1966 account - before the end of the year, did he pay it?

A. No sir.

Q. All right - now at the time you returned the check that Mr. Owens asked you about, what was the amount of that check?

A. \$200.00.

Q. It was not in the amount of \$674.23, was it?

A. No sir.

Q. And at the time you returned that check this condemnation proceeding had already been begun, had it not?

A. Yes sir.

Q. You had received notice that application had been filed to condemn this property?

A. Yes sir.

DOCTOR GEORGE J. MITCHELL, A DEFENDANT, BEING FIRST DULY
SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Owens.

Q. State your name?

A. Doctor George J. Mitchell.

Q. You are the same individual referred to in the lease dated April 18, 1958?

A. Yes sir.

Q. From the Single Tax Corporation?

A. Yes sir.

MR. OWENS: May it please the Court, I would like to offer lease agreement between Doctor George Mitchell and Single Tax Corporation, dated April 18, 1965, and recorded in Deed Book 265 at page 105-05 - certified copy - as our Exhibit 3.

THE COURT: Why are you offering that? The lease is already in evidence - it doesn't matter to me whether it is certified or not; it is going to make the record more expensive, but go ahead and put it in.

MR. OWENS: I would like to offer as Mitchells' Exhibit 4, certified copy of a transfer from Joseph L. Collins, divorced to Doctor George J. Mitchell, the transfer being

dated April 9, 1958, and recorded in Deed Book 264, page 466 and involving the piece of land in this proceeding.

MR. STONE: Object to that; that is prior to the lease.

MR. OWENS: Instrument by which he acquired interest in this.

MR. STONE: Do you mind if I state my objections? It is prior to the date of the lease from Fairhope Single Tax Corporation to Doctor Mitchell; we have no quarrel, but that Doctor Mitchell owned the improvements on the property condemned; there is no question between the parties. I guess that is a transfer of the improvements?

MR. OWENS: Leasehold interest.

MR. STONE: It could have no legal effect without the consent of the Fairhope Single Tax Corporation; we have leased you the land and I think it is irrelevant, incompetent and immaterial; I don't know that it helps or hurts either side.

THE COURT: Overrule the objection.

MR. STONE: We except.

Q. Doctor Mitchell, I call your attention to a matter that happened during certain negotiations concerning this property at the time Howie was in possession - What was the status of the rent arrangement between you and Howie and Fairhope Single Tax Corporation?

MR. STONE: Object as being vague, indefinite and uncertain; I can't tell what he is trying to illicit from the witness.

THE COURT: Overrule the objection.

MR. OWENS: I withdraw the question.

Q. Directing your attention to rental delinquency that existed in the Fairhope Single Tax in September of 1965, I will ask you how much delinquency there was at that time between you and the Single Tax Corporation?

A. At this particular time when Mr. Gaston stated this property was put up for sale in the paper, there was an agreement we had - - it wasn't on paper - that if Howie didn't pay I would; in that way Howie was always delinquent.

MR. STONE: Object to any agreement between this witness and Howie.

Q. The agreement between you and Doctor Gaston?

A. I have talked to Doctor Gaston time and time again and I would say: "Doctor Gaston, I will send you the rent " and he said: "That is fine" and going back to the time Howie was in the place and we had started negotiations with the City of Fairhope, we started June or July of 1965, a payment became due and at this time the City of Fairhope stated they would make an agreement with the Single Tax Colony that they would pay all taxes or arranging with the Single Tax Colony at this time a payment became due and the negotiations were drawn out and Mr. Gaston wrote a letter stating this would be put up for sale - -

MR. STONE: I hate to interrupt the Doctor, but he is going far-a-field and injecting in the testimony things that has nothing to do with the issues between us today.

THE COURT: The purport of what he is saying, was to show from time to time payments became delinquent and they didn't forfeit the lease and to my mind that certainly has a bearing on the case as to whether they can say the lease is forfeited now. That is what he is doing and I overrule the objection.

MR. STONE: Except.

WITNESS: I was attempting to tie together - -

MR. STONE: Could we request that questions be directed to the witness.

THE COURT: How could he explain a thing that happened over a period of time?

MR. STONE: Object as contrary to the rules of procedure; it puts the Fairhope Single Tax Corporation

to an undue disadvantage to elicit testimony - - -

THE COURT: Overrule the objection.

MR. STONE: We except.

A. Mr. Howie - he paid, I think the tax was around \$1700.
if I recall - - Mr. Howie paid \$900.00 and some odd dollars and I
gave Mr. Gaston a check and said, "Mr. Gaston, if Howie doesn't
pay I will" and he took the check and cashed it - it was for
some \$525.00 and then they held everything in abeyance and I was
instructed by the City of Fairhope - - -

Q. - - - Stpp there - - Did Fairhope Single Tax Corporation at
that time accept from you and Howie past rentals in September of
1965?

A. They accepted this money and held everything in abeyance.

Q. How much was it?

A. In rough figures, between \$1400.00 and \$1500.00.

Q. Do you remember about how much the rental was at that
time?

A. Around \$1900.00 - - - There was still a balance.

Q. You are talking about the total rental - -

How much was the rental per year at that time?

A. About \$700.00 or \$780.00

Q. This money they accepted in September of 1965, did it include
more than one years rental?

A. Oh yes. I mean that is what we paid and then this thing
was brought to Court - - -

THE COURT: Wait a minute and let him ask the questions.

Q. Do you recall receiving a letter from Doctor Gaston this
summer concerning the rental?

A. You mean last summer?

Q. Yes, August of 1966?

A. Yes sir.

Q. All right - what did he state then - - Did he request the
rental payments?

A. Yes, he said "Your Casino leadehold - -

Q. Just answer the questions. Did you, subsequently discuss with him the matter of payment of rent over the 'phone?

A. Yes sir, in September.

Q. Did you at that ti e send him a check in part payment of the rent that was due?

A. Check - - not only then, but subsequently and in the following months according to our agreement; I have receipts for that.

MR. STONE: Are you talking about 1966 or 1965?

MR. OWENS: Fall of 1966.

Q. Did you send him checks in the fall of 1966 to be applied to the rental accounts?

A. Yes sir.

Q. Were the checks so applied?

A. I didn't check them; I imagine so; my agreement - - -

Q. - - - Now did you have some correspondence with him in November concerning the payment of taxes on this particular property?

A. I think so.

Q. All right - Did you, subsequently, pay the taxes and tender to him the tax receipts?

A. Correct. I had an u nderstanding with Doctor Gaston - -

MR. STONE: I object to him making statements in the record.

THE COURT: Just wait and answer the questions, Doctor.

Q. Now during the period of the lease existence, Doctor Mitchell, would you state for the record the sums of rental paid by you for each year during your lease period?

A. - -

MR. STONE: I object to that; he is going back to 1958 I guess - -

THE COURT: Overrule the objection.

MR. STONE: Except.

A. 1958, \$572.54; 1959, \$572.54; 1960, \$572.54; 1961, \$604.18; 1962, \$604.92; 1963, \$604.10; 1964 \$776.65, 1966, \$776.00 -

Q. There was a balance due and owing on that, was there not?

A. Small balance.

D. Did Doctor Gaston ever, other than this particular time in 1965, when you were told that the property would be advertised, did he subsequent to that time ever advertise any property that you know of?

A. No sir.

Q. Or ask you to leave or evict you in any fashion?

A. No sir.

Q. Was this property held by you for rental during the period of this lease, Doctor Mitchell?

MR. STONE: We object to why -- You said: "Was it held by you for rental" and we object to that.

THE COURT: Sustain the objection.

MR. OWENS: Except.

Q. Doctor Mitchell, do you know the annual rental value of this entire tract of property for the year just prior to the time it was taken in this condemnation proceeding? -- What you could have rented the property for?

MR. STONE: We object to that.

THE COURT: Sustain the objection.

MR. OWENS: Except.

Q. Doctor Mitchell, do you know the rental - reasonable rental value of this particular piece of property at the time just prior to the time that it was condemned by the City of Fairhope?

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MR. STONE: Object to the question, may it please the Court, on these grounds: --

MR. OWENS: -- -- I just asked him if he knew.

MR. STONE: Are you through with the question?

MR. OWENS: Yes.

MR. STONE: We object on the grounds that the proper predicate has not been laid - not differentiated between the improvements and the land itself; because of the nature of this proceeding, it should be differentiated, in view of the lease in evidence; it calls for irrelevant, incompetent and

immaterial testimony.

THE COURT: Overrule the objection.

MR. STONE: We except.

Q. Howie was living in the place - -

Q. I didn't ask you that. I didn't ask you anything about Howie.

A. He was getting the rent; I was going to tell you what he was getting.

MR. STONE: Object to that.

THE COURT: Overrule the objection.

MR. STONE: We except.

A. Between \$500.00 and \$600.00 a month.

ON CROSS EXAMINATION OF THIS DEFENDANT, HE TESTIFIED AS
FOLLOWS:

Examination by Mr. Stone.

Q. Are you talking about the rental value of the improvements, Doctor Mitchell?

A. Yes sir.

Q. What would be the rental value of the land without any improvements on it?

A. It would be a vacant lot.

Q. Yes?

A. That is contingent on what you are going to use it for; I would say some where between - - Similar lots in Mobile for parking place - -

THE COURT: That ain't what he asked you; if you don't know, say so?

A. I don't know.

Q. You purchased the improvements on the property, didn't you?

A. Yes sir.

Q. You rented the land from Fairhope Single Tax Corporation?

A. Yes sir.

Q. And you agreed to pay them the rental value each year, as determined by them?

A. Yes sir.

Q. You realized that your rent was subject to adjustment every year?

A. I didnt't know that then.

Q. Do you know it now?

A. I paid different amounts.

Q. You paid different amounts?

A. Yes sir.

Q. The figures you gave were going up ?

A. All of the time.

Q. Now in September of 1960 - the fall of 1960 - that Mr. Owens was asking you about, you agreed to pay Fairhope Single Tax Corporation all of the 1966 rent which was then delinquent by the end of the year, didn't you?

A. No - -

Q. You said - -

Q. 1966?

A. I called Mr. Gaston relative to your question and I said, "Mr. Gaston, will it be permissible to pay you approximately \$100.00 a month until we are up to date" and he said he would talk to the Single Tax Colony and that was permissible, because we paid that and I sent them a \$200.00 check in March or April and it was sent back.

Q. You introduced this letter from Doctor Gaston, dated September 20, 1966. He acknowledged receipt from you of \$200.00?

A. Yes sir.

Q. He states in there that he recollected or recalled that you would pay the balance of the 1966 rent by the end of the year. Do you see that in the second paragraph of that letter?

A. That is correct.

Q. Is that what you told Doctor Gaston?

A. No sir.

Q. Did you not tell Doctor Gaston you would pay that?

A. I do not recall, and to confirm this sentence in the letter I called him subsequently and asked him if it would be permissible to send him \$100.00 a month because my taxes were coming due.

Q. This is my question: Did you or did you not pay all of the 1966 rent by the end of the year 1966?

A. I paid him \$100.00 - - -

THE COURT: Just answer the question. Did you or didn't you?

A. I didn't keep records because the agreement I made with him, I accepted my agreement - He accepted my agreement that I made with the Doctor paying \$100.00 a month and I paid the taxes and sent a check for \$200.00 and I figured we were about caught up and this did not include the taxes for 1967.

Q. You understand, under the lease the rent is payable in two equal installments in advance?

A. That is correct, but it never had been done; never had been done?

A. I am speaking of the July 1966 payment due. Did you pay that by the end of 1966?

A. Not the 1967 payment.

Q. Did you pay the rent that was due for the year 1966 by the end of 1966?

A. According to the Doctor there was \$100.00 and some odd dollars, but I asked him - -

Q. Can you tell Judge Mashburn that Doctor Gaston is wrong?

A. - -

Q. Wrong on the \$197.00 that he said was due?

A. No, I didn't say that.

Q. At the time you sent the \$200.00 check in March of 1967, do you remember that?

A. Yes sir.

Q. What was that for?

A. On account; I had an agreement with him and he said it was perfectly all right and I was going according to our agreement.

Q. Just answer the question. At the time you sent that check you had already been served with a notice that an application had been filed to condemn this property?

A. That is correct; legally, I didn't know that that affected our relationship.

Q. That is the check that was returned to you by Doctor Gaston with the notation that their Attorney advised them that the property was the - was subject to eminent domain proceedings?

A. That is right and subsequently I called my Attorney.

Q. Is there now between you and the City of Fairhope a law suit involving this same property?

A. There is.

Q. Does that law suit involve monies that the City of Fairhope placed in escrow in a bank in Fairhope for the purchase of this property?

MR. OWENS: I object to that; that is about as far afield as I ever got; I don't see what that has to do with the case

THE COURT: What is the purpose of that, Mr. Stone?

MR. STONE: To show that he is trying to collect twice.

THE COURT: That he is trying to collect twice - I overrule the objection.

MR. OWENS: Except.

Q. Do you claim some monies now in the other law suit?

A. This suit was filed before this suit came up.

Q. Do you claim some monies in that suit?

A. I have a property value on the piece of property.

Q. What is your claim for?

MR. OWENS: Object to that, May it please the Court; I don't mind stating this suit is within the knowledge of this court; it was filed before the condemnation suit = It is on a bill of interpleader filed by the First National Bank of Fairhope in which Doctor Mitchell was joined as a party; it might even be mute now.

THE COURT: I wondered if it was between him and them why didn't we combine them.

MR. STONE: We are not a party.

THE COURT: I thought you said between him and the Single Tax Corporation?

MR. STONE: This is a suit over the right to this money which was the purchase price agreed to be paid by the City of Fairhope to Doctor Mitchell for this property.

MR. OWENS: Let me state what it is and you can see - It is a bill of interpleader - -

MR. STONE: I'm talking about the _____; the record will speak for itself.

MR. OWENS: Doctor Mitchell was made a party and filed a bill for specific performance; obviously there is no specific performance.

Q. Are you stating in open Court that Doctor Mitchell does not claim any of the funds?

MR. OWENS: Subject to the action of the Court, I don't see how he could claim those funds.

MR. STONE: I think your Honor will take judicial knowledge of what is in this other proceeding, but in the event, I am mistaken, I would like at this time to offer to introduce that Court file, if you disagree on the question of judicial knowledge. I will offer the entire court file.

MR. OWENS: I had just as soon you offer the court file.

THE COURT: I don't think it is necessary.

THE COURT: Let me say this: If I have given him money in one case, I would not turn around and give him money in a other case.

MR. STONE: I am trying to find out what Doctor Mitchell does claim, but I think the Court file will speak for itself.

Q. Doctor Mitchell, you understood when you entered into this lease with Fairhope Single Tax Corporation that your rentals were subject to adjustment in each year of the lease, did you not?

A. Yes.

Q. And that they would be adjusted in each year of the lease, did you not?

A. Yes.

Q. And that they would be adjusted either up or down according to the decision and/ⁱⁿthe sole discretion of the Fairhope Single Tax Colony?

A. Right.

A. And the value of the improvements that you placed there or caused to be placed there, would have no relationship to the amount of rent you were charged by the Fairhope Single Tax Corporation?

A. Yes sir.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Doctor Mitchell, you also understood that you had the right as long as you paid the rental - whatever/^{the}rental might be - to occupy the premises for the remainder of the 99 years?

A. Yes sir, right.

Q. And to put the same to any legal use consistent to the zoning laws of the City of Fairhope?

A. Yes sir.

MR. OWENS: I would like to introduce the records of the Tax Assessor of Baldwin County, Alabama, on the improvements, which was made by Doctor Gaston for the past several years; he may be willing to stipulate that these

are admissible. Doctor Gaston made the assessment and Doctor Gaston, in behalf of the Corporation set a value.

MR. STONE: He testified that he did it as agent for Doctor Mitchell and not as agent for Fairhope Single Tax Corporation.

MR. OWENS: The lease designates the authority.

MR. STONE: Yes, as his agent.

THE COURT: Do you want it in here to say that they fix the value?

MR. STONE: Yes.

THE COURT: That is not what he testified.

MR. OWENS: That is not his testimony.

THE COURT: He said: "I did it as agent for Doctor Mitchell.

MR. OWENS: Still if I could hold it over until I could get that introduced = - - I think the value is consistent up to the last year.

THE COURT: I don't want to agree to something that I don't know, but I do know from my own knowledge that the Board of Equalization got into the act two or three years ago and this might be their valuation and not Doctor Mitchell's or Doctor Gaston's; I know that I represented land owners in Fairhope protesting land valuations. We will hold it over and give him an opportunity to introduce it.

MR. STONE: Again with respect to the records - We would like to make these remarks concerning the testimony that was taken before the jury with respect to the assessment of damages, if any, to which these parties now before the Court were entitled from the City of Fairhope; I do not feel that it should be necessary to introduce all of that testimony on the other side of the hall. If Mr. Owens thinks it is necessary, we would like at this time to offer all of the testimony taken before the jury in the trial of the issues - the issue of damages, at which trial Judge Mashburn presided and which was

held September 11, 1967, Circuit Court of Baldwin County,
Alabama - C

MR. OWENS: I except to that as being too broad and I believe the testimony, or any on which you are relying should be presented to the Court so that we might have an opportunity to rebut or refute it.

MR. STONE: Do you think we should introduce more testimony before Judge Mashburn as to values?

MR. OWENS: As far as the introduction of testimony as to the value of improvements as opposed to the value of the land - -

MR. STONE: I want to save this question. I don't want this question to have arisen. I would like, if you are leaving it open to him on the taxes that you also leave it open on values.

THE COURT: It seems to me that I need evidence on value - if I am going to hold it open to one - -

MR. OWENS: That is beside the pleadings

MR. STONE: - -

MR. OWENS: - - Mr. Stone filed his only pleading which which said that my client was entitled to nothing because of the rent - - -

MR. STONE: I think it would be a good idea to set it down on a day certain.

THE COURT: Yes; I want to get through with it.

NOVEMBER 29, 1967

WALTER LINDSEY, A WITNESS FOR FAIR HOPE SINGLE TAX CORPORATION,
BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Stone.

MR. OWENS: We will agree that Mr. Lindsey is a
qualified real estate dealer.

Q. Is this Mr. Walter Lindsey?

A. Yes sir.

Q. Where do you live

A. Bay Minette, Alabama.

Q. Are you engaged in the real estate and insurance business
in Bay Minette?

A. Yes sir.

Q. Are you familiar with the property in Fairhope which is the
subject matter of this hearing and which is generally known as the
Old Fairhope Casino property?

A. I am.

Q. Did you, within the last year, make an appraisal of that
property?

A. Yes sir.

Q. What, in your opinion, was the total value of that land
- land and improvements?

A. \$23,500.00.

Q. Did you examine the improvements to determine the value, if
any of the improvements?

A. I did.

Q. Of the total amount you testified, what portion did you
ascribe to the improvements?

A. Only \$500.00 on the improvements.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Mr. Lindsey, there was a Bowling Alley on the premises?

A. Yes sir.

Q. Did you form an opinion as to how or from what it was construct-
ed?

A. The building was concrete blocks.

Q. Stucco on the outside?

A. Yes sir.

Q. And plastered on the inside?

A. It was.

Q. Bowling Alley lanes built in?

A. The lanes were built in; they were old and not in good repair.

Q. Did you give any value to the lanes?

A. What value I figured on the buildings was on that, less the cost of removing the rest of the buildings.

Q. What value did you place on the bowling alley building?

A. I only appraised it at a net of \$500.00, on what I figured it would cost to tear down the rest.

Q. How many square feet were there in the bowling alley?

A. I don't remember.

Q. About 2,500?

A. 2,000 probably - I might be wrong about the square footage - - I don't remember.

Q. Did you examine the piling under the building?

A. I did.

Q. Are you knowledgeable where piling is concerned of the value thereof, and whether or not it is good or bad?

A. I think it would take a lot of testing to determine whether piling had any value.

Q. Did you ascribe any value to the piling?

A. No I did not.

Q. How long did you spend down there?

A. A half day.

Q. A half day at the site?

A. A half day at the site; we went over it well.

Q. Who else was with you?

A. Mr. Pennington and Mr. Ebert.

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Q. Now Mr. Lindsey, in your opinion, what was the fair market value of that entire property if sold clear of the lease?

A. \$23,500.00.

Q. What would be your opinion of the property if sold subject to the lease?

A. I am not qualified to determine that; that is based on a lot of testimony and not on a physical inspection of the property.

Q. You don't have any idea what the property would be worth sold subject to the lease?

MR. STONE: May it please the Court: I don't think that is a fair question to Mr. Lindsey in view of the terms of the lease and the type hearing we have here.

THE COURT: Of course, you can't force him to answer; but I think it would be a fair question. As a real estate agent, or expert, he goes to the site, values the property, and if you have a lease, certainly there is a different value on the piece of property, subject to lease - -

MR. STONE: It is so general - He could say a lease with one more month to go.

THE COURT: This is equity - -

MR. STONE: No, this is law.

THE COURT: Overrule the objection.

MR. STONE: Except.

A.m If you will give me the amount of rent - -

Q. Assuming the rent for 1966 was \$700.00 - -

-- MR. STONE: I object further on the ground this is a departure from the terms of the lease, which is the subject matter of this proceeding, in that the lease provides the rental is adjusted every year there is no set rental under the Fairhope Single Tax Lease and it is impossible to answer the question as framed.

THE COURT: I don't see very well how he can

answer it; you assume rents this year for a certain amount and next year it might be different.

MR. OWENS: I asked him at the time of the taking in 1966?

WITNESS: You don't know what the rent is and neither can I tell you the value.

Q. You can not state what you think the fair and reasonable market value of the property would be subject to the terms of the lease? - - You are familiar with Fairhope Single Tax leases, are you not?

A. Yes sir, I have read them.

Q. You know the rental they provide is variable?

A. Yes sir.

Q. F.H.A. loans money on them?

A. Yes sir.

Q. Baldwin County Savings & Loan loans on this property?

A. Yes sir.

Q.

What, in your opinion, would be the fair market value of this property which you examined, if sold subject to the lease?

MR. STONE: I object to the question again.

THE COURT: Overrule the objection.

MR. STONE: We except.

WITNESS: I can't answer that.

MR. PENNINGTON, A WITNESS FOR THE FAIRHOPE SINGLE TAX CORPORATION,
BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

MR. STONE: Let the record show that the parties agree that Mr. Pennington is qualified to testify as to the values of real estate.

Q. Mr. Pennington, you are familiar with the property generally known as the Old Casino property in Fairhope?

A. Yes sir.

Q. Have you, within the last year, appraised this property?

A. Yes, on the 19th day of April.

Q. You were appointed as an appraiser by the Probate Court of Baldwin County, Alabama?

A. Yes sir.

Q. And you later testified to the appraisal on the jury trial with respect to the values?

A. Yes sir.

Q. What, in your opinion, Mr. Pennington, was the value of the Old Casino property in Fairhope? - - Land and improvements?

A. \$24,750.00

Q. Of that amount, Mr. Pennington, what portion did you ascribe to the improvements?

A. \$1,500.00.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Mr. Pennington, what value did you give to the building that contained the bowling alley?

A. \$1,500.00; that is the only portion of the structure that I gave any value.

Q. Did you examine the piling?

A. Yes sir.

Q. Were you sufficiently familiar with piling to determine whether or not they had value?

A. Not without test by an engineer; they are leaning as we have photographs to show.

Q. Of the ones on the bay?

A. They have photographs from the northeast corner; they are not in line; for those piling to be of value, a building would have to be engineered to fit the piling after testing them; I don't think that you could place any value on those for a new building without having the engineer to fit the building to the piling; in my opinion, they were of no value.

Q. Did you examine the bowling alley that was

built in, and if you did, did you make any inquiries as to the value of the equipment that was built in the small bowling alley?

A. The only equipment I saw were the lanes and they were in very bad repair and not usable, because of the debris and the condition the building was in.

Q. At the time you appraised it, were you familiar with the fact that the City of Fairhope had offered \$23,000.00 for the leasehold interest?

MR. STONE: We object to the question.

THE COURT: Sustain the objection.

MR. OWENS: We except.

Q. About how many square feet were in the bowling alley?

A. It is $22\frac{1}{2}$ feet long - wide, by 101 feet long, a total of $2,273\frac{1}{2}$ square feet.

Q. The value that you placed on that was \$.50 a square foot?

A. Well I went at it in a little different way; I depreciated it down.

Q. When you appraised it, you appraised it on what you thought would be the highest and best use?

A. The bowling Alley?

Q. The entire property?

A. Yes sir.

Q. As such, any improvements that were on there in the light of the highest and best use, if that did not agree with your use, then you didn't count it, did you?

A. Not particularly.

Q. Did you consider any other use that the Bowling alley building might be used for?

A. The bowling alley was built in and attached to as a part of the old Casino.

Q. As a part of the old Casino - - You mean there was not a separate building?

A. It was adjoining - right against it.

Q. It was an accepted building?

A. I have a picture of it, since everything else was torn down, they were all in the same complex.

Q. Attached only by wooden arch-way, is that correct?

THE COURT: What difference does that make?

Q. What was the bowling Alley constructed of?

A. Concrete blocks.

Q. Plastered on the inside?

A. I believe it was.

Q. Stucco on the outside?

A. I don't remember any stucco on the outside.

Q. Do you remember the type roof that it had?

A. Yes sir, it had shingles on half of it and rolled roofing on the other half - - On one side it was one type and the other side was another.

Q. And the total value of that you gave to the improvements was \$1500.00?

A. Yes sir.

Q. That is in the light of what you thought was the highest and best use of the property?

A. Yes sir, because that is about the only thing it could be used for in my opinion, after much repair.

Q. You gave no value at all to the old Casion?

A. No sir.

Q. Nor to the piling?

A. No sir.

Q. Do you have an opinion as to the fair market value of the leased tract if sold clear of the lease?

A. In my opinion that building is in such repair - - -

Q. - - -I asked you what the entire value of the property if sold clear of the lease? - - Would that be \$24,750.00?

A. Yes sir.

Q. What would be the fair market value if sold subject to the lease?

MR. STONE: Object.

THE COURT: Overrule the objection.

MR. STONE: We except.

MR. STONE: I would like to state as grounds for my objection that the question is vague and uncertain and not particularized in any respect; I don't see how any one could be called on to answer it without knowing the terms of the lease and how many facets are involved.

THE COURT: If he says he does not know - -

MR. STONE: He has not answered it yet.

THE COURT: I won't force him to answer.

A. I would not offer any value under the terms of the lease because it wasn't in usable condition at the time.

Q. It is your opinion that the fair market value, if sold subject to the lease was nothing?

A. That would be my opinion.

MR. CHARLES J. EBERT, JR. A WITNESS FOR THE
COMPLAINANTS OR PLAINTIFF, FAIRHOPE SINGLE TAX, BEING FIRST
DULY SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Stone.

MR. OWENS: Let the record show that the parties agree that Mr. Ebert is qualified to testify as to the value of the property involved.

Q. Is this Mr. Charles J. Ebert, Jr.?

A. That is right.

Q. Where do you live, Mr. Ebert?

A. Foley,
Alabama.

Q. Are you familiar with the property that is generally known as the old Casino property in Fairhope?

A. Yes sir.

Q. You have appraised this on one occasion under a commission from the Probate Court of Baldwin County, Alabama, under the condemnation proceeding?

A. Right.

Q. What, in your opinion, was the value of the entire tract known
1 as the old Casino property, including the improvements?

A. I placed a value of \$26,000.00.

Q. Of the \$26,000.00 what amount, if any, did you ascribe
and is figured for the improvements?

A. \$3,000.00.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. What portion did you attribute the \$3,000.00 to?

A. To the bowling Alley portion.

Q. When you considered that, did you consider it for the highest
and best use only?

A. In trying to arrive at a value of the building, it was based
on my thought of what it would be worth to be used for anything
and I guess that would be the highest and best use.

Q. And your total value was \$3,000.00 - - How much was that a
1 square foot?

A. That figured out a little better than \$1.00 per square
foot; it think it was about 2300 square feet.

Q. Had the Bowling Alley built in?

A. Yes sir.

Q. Did you give any value to the Bowling Alley?

A. No I didn't include anything, but the bar~~e~~ building.

Q. Assuming that competent testimony was to the effect that
the bowling alley and bowling equipment had value, would
have
you/increased that by that amount in ascribing values?

A. If it was known to me that the bowling alley had
value, I would have included that to include the value.

Q. The bowling alley building was a separate building?

A. It had its separate walls, but the roofs were

abutting together in such manner that it would be considered one building.

Q. Maybe perhaps for insurance, but it actually had its four walls?

A. Yes sir.

Q. Stuck on?

A. Part was stuck ~~on~~ and part not; the part there where it joined the other building had never been stuck on.

Q. Did you consider the piling in the building in the main casino?

A. I did not attribute any value to the piling because the condition of the piling where they could be used in other buildings, or another building, was unknown, so I didn't at that time nor now consider there was any value. If somebody said there was a value, that could be correct, but I didn't think there was a value there.

Q. If the testimony was that the piling should have a value should the building be replaced, then you would increase your testimony to cover that amount?

A. To the extent that that influenced my opinion, yes. I would not accept some body else opinion that it was worth X amount of money and increase it by that amount.

Q. What, in your opinion, is the fair market value of this lease tract if sold clear of lease?

A. The value that I ascribed, \$26,000.00.

Q. What, in your opinion, would be the fair market value if this same property was sold subject to the lease?

MR. STONE: We object.

THE COURT: Overrule the objection.

MR. STONE: Except.

A. Not being aware of the terms of the lease, I would not form any opinion as to the value/

Q. Assuming the lease was made in 1958, and was a standard Fairhope Single Tax lease - - You are familiar with those, are you not?

A. No I am not.

ON RE-DIRECT EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

Q. Mr. Ebert, when you say you would increase your valuation to include any value that somebody placed on the bowling alley improvements - You would increase the \$26,000.00 by whatever that figure was?

A. Yes; I would like to explain that a little.

Q. Let me ask you this question - did you ascribe a value of \$23,000 to the land?

A. Yes sir, and \$3,000.00 to the building.

Q. Do you have some photographs of the building with you?

A. Yes sir.

Q. Mr. Ebert, look at these photographs which have a notation 4/19/67 on them and tell me whether you recognize those or not?

A. Yes, I recognize those.

Q. Do they accurately portray the property that you have been testifying about here today?

A. Correct.

MR. STONE: We would like to introduce these in evidence as a group, as the Fairhope Single Tax Corporation's Exhibit 1.

ON RE-CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Owens.

Q. Charlie, you said that the value of the land as opposed to the improvements was \$23,000.00?

A. The land, yes \$23,000.00.

Q. What would be, in your opinion, a reasonable rental value of the land as opposed to the improvements?

MR. STONE: We object to that question; it is not germane to the issues involved in this proceeding.

THE COURT: Sustain the objection.

MR. OWENS: We except Is it the position of the Court that the land could be rented or an opinion that the rental value was more than that in the lease - the lease would not be entitled to show that.

THE COURT: I might be wrong but I think I will

change my ruling. I think he has a right to show that.

MR. STONE: We are basing our objection on the terms of the lease about which Mr. Owens has been examining the witness and in - - if you will recall, the property can't be sub-leased without the consent of the lessor; and the lessor specifically provides that the rental is adjusted every year by the lessor so that the rental will reflect the reasonable rental.

THE COURT: My idea is this: Suppose he has it leased for \$700.00 and in his estimation he could rent it for \$1000.00 a year. I think he would be entitled to show that.

MR. STONE: Not under the Fairhope Single Tax lease; under normal leases, yes, but it is our position that under this lease if the lessee can rent it - rent the land and the improvements for \$1,000.00 a year, that is the reasonable rental value and this lease is adjusted up to that. We are really getting into the law, which your Honor wanted us to refrain from doing, and which we will present in the form of briefs - -

THE COURT: I don't believe he will know what it will lease for over there; he lives in Foley and how would he know what the value would be?

MR. OWENS: May it please the Court, he placed the value on the land - -

THE COURT: It is different in what it would sell for and what it would lease for; I am going to rule with you and I am afraid that I am wrong and it is your little red wagon and if you insist on asking the question, I will overrule the objection.

MR. STONE: We except.

A. I didn't go into the question of lease value of the land, because the only question I was aware of at the time was to determine the value of the real estate and improvements as they existed. I would have no way now to give an opinion as to

what the rental value of the property would be.

MR. R. F. PAUL, A WITNESS FOR DOCTOR MITCHELL, BEING FIRST DULY
SWORN, TESTIFIED AS FOLLOWS:

Examination by Mr. Owens.

Q. You are Mr. R. F. Paul?

A. Correct.

Q. Where do you live?

A. Mobile.

Q. What is your business?

A. General contractor.

Q. How long have you been in the general contracting business?

A. 15 years.

Q. Prior to that time - -

A. - - I am a registered, professional engineer and
practiced my engineering profession prior to that time.

Q. Where were you educated?

A. Auburn, class of 1938.

Q. You worked on commercial as well as residential property?

A. Yes sir.

Q. Worked on jobs requiring piling?

A. Yes sir.

Q. You worked on the Bankhead Tunnel as an Engineer?

A. Yes sir.

Q. You are associated with Roberts brothers in some form?

A. No, not in business; I have worked for them - appraisal
work in condemnation proceedings.

Q. At the request of Doctor Mitchell, did you examine the property
involved known as the Casino property in Fairhope, Alabama?

A. Yes sir, I did.

Q. On how many occasions?

A. Three different occasions.

Q. On April 24, 1967, or therabouts, at the time of the taking of this property in the condemnation suit, did you examine the property?

A. Yes sir.

Q. I will ask you if you found a bowling alley or building containing a bowling alley?

A. Yes sir.

Q. Would you tell the Court how it was constructed, and of what it was constructed?

A. Yes sir. Concrete blocks, stucco on the outside and plastered on the inside and wood frame and rafters and composition shingles, wood flooring, I believe with bowling alleys built in.

Q. Bowling alleys were built in?

A. Yes they were, un huh.

Q. About how many square feet in the building, do you remember?

A. The building was roughly 100 by 255feet - - between 2400 and 2500 feet.

Q. Was the ceiling walled in?

A. Oh yes.

Q. Now in your opinion, what was the value of that building as it stood at the time of the taking?

A. The value of the building at the time of taking would be \$15000.

Q. How did you arrive at that figure?

A. I took the present replacement cost at approximately \$10.00 a square foot and subtracted the depreciation, which would be \$25,000.00 less the depreciation of \$10,000.00, giving the present value of \$15,000.00.

Q. What about the Bowling Alley equipment. Did you check into that to determine the value of that?

A. Yes I did; I checked with the largest Bowling Alley operator in Mobile.

Q. Was he familiar with this Bowling Alley?

A. Yes sir, he was.

Q. What value did he ascribe to that?

MR. STONE: You are going into hear-say.

Q. What value did you place on the Bowling Alley according to that?

MR. STONE: Object. Hear-say.

THE COURT: Do you have an opinion as to the value of the Bowling Alley equipment?

WITNESS: Yes.

THE COURT: You can give that, but not what somebody else told you.

MR. STONE: The proper predicate has not been laid.

THE COURT: You asked him if he had an opinion as to the value of the Bowling Alley?

MR. OWENS: Yes.

MR. STONE: We object on the ground that the proper predicate has not been laid; he has been in the construction business - -

WITNESS: I have gone into this as a registered Engineer and found out and checked in Houston Texas last week and the present cost of Bowling Alley per lane is approximately \$2,000.00 - the present cost of installation.

Q. What was the status or condition of the lanes that you found in the Bowling Alley building?

A. Since it was not in use, to a casual observer it would be rather bad, but to an experienced person, the dust and debris had nothing to do with the oak floor that was there and a small amount of sanding, they could be levelled and put into use.

Q. Were they warped or twisted?

A. No sir.

Q. By debris, what are you speaking of?

A. Dust and accumulation from dis-use. The value of the alley

is determined by the value of the oak put into it.

Q. What value did you put on the Alleys?

A. Less depreciation it would be \$6,000. for the four lanes.

Q. Did you go over the piling under the Casino?

A. Yes sir, I did.

Q. What did you find.

Q. The piling under the old casino on the two rows facing the water were subject to bad deterioration.

Q. I show you these pictures right here that were taken.

Now the piling that is shown on the pictures, all of the piling in this particular building?

A. No sir, this represents less than 1/3 of the piling.

Q. That deteriorated because the sea-wall had broken down?

A. The remainder of the piling were in good condition and still in the ground.

Q. Did you examine that piling on more than one occasion?

A. Yes I did; I went back after the building was torn down and checked the piling and the piling in the ground is still serviceable.

Q. What, in your opinion, is the value of the piling that was in the ground?

A. Current construction cost on piling represent approximately \$1.00 a square foot and since the original two story casino had over 6,000 feet, this would represent \$6,000.00 for piling, less 1/3 for bad piling, which would represent a value of \$4,000.00 in the ground.

Q. Did you determine that this piling could be used in the event another building was erected?

A. Yes sir, perfectly fit for a new building.

Q. You heard that the piling was out of line and a building would have to be engineered to fit the piling?

A. That is true for the two rows facing the water.

Q. What about the other?

A. Still are in servicable condition.

Q. Were they in a line which would permit reuse?

A. Oh yes. They were not sticking above the existing ground to go out of line; they are driven close to the present ground level.

Q. Were they capped?

A. Those back up in the ground was not capped; it was not necessary, except with a wood cap - some of them had brick caps.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

Q. Mr. Paul, you say that that bowling alley building with the equipment in it is worth \$21,000.?

A. \$15,000 for the building and 4 alleys at \$1,500.00 each, that is correct.

Q. That is that little building here on the right hand corner of this picture which you put a check mark there - - That is this little building?

A. That is correct.

Q. You say that building is worth \$15,000.00?

A. That is correct, that is basing it on \$10.00 a square foot, less depreciation.

Q. For concrete block building - \$10.00 a square foot?

A. Yes sir.

Q. Just a shell?

A. It was not a shell.

Q. Well it had a roof and four walls?

A. Actually ceiling and plastered walls.

Q. Is that the cost in Mobile, Alabama?

A. Yes sir.

Q. All right. Now you had \$4,000.00 for piling, is that correct?

A. Yes sir.

Q. Did you run jack tests on the piling?

A. No sir, I did not.

Q. Have you looked at that building from the Fairhope Municipal pier and saw it sagging - - What would that indicate to you?

A. That outer row of piling had sagged.

Q. What about the upper story where the small windows are; is that over the outside piling?

A. It is in the first and second row of the piling.

Q. That does indicate the building sagging?

A. Yes sir.

Q. As an engineer, you would say that would indicate that this piling was giving away?

A. That is correct, on the sea-wall side.

Q. Looking from the north in a southerly direction do you see a sag in the building there?

A. The corners are sagging.

Q. Would that indicate to you that something in the foundation would be weak?

A. No sir.

Q. What would that indicate?

A. That the building had not been kept in line; the windows are in line - the eaves probably need repair.

Q. Do you see the second tier of windows there?

A. Yes sir.

Q. Do those windows there look in line?

A. Yes they do look in line.

Q. What is that land worth that the property is sitting on?

A. I have not the faintest idea.

Q. Didn't you testify in Court that the estimated value of the land was \$23,250.00?

A. No sir; I am not qualified as a land appraiser.

Q. Let me ask you this: Didn't you testify in answer to questions by Mr. Owens on the trial of this case - - let me go back - - "Now Mr. Paul, do you have an opinion as to the market value of this property at the time of taking? A. Yes sir I

do. Q. What is that? - -,What I'm asking you is whether you testified to these answers that I'm asking you about - -

A. I came up with a figure of \$55,950; that is with the land and depreciation. Q. All right, in arriving at that figure, did you give any value to the piling or piers under the old casino building? A. Yes sir, I did; I broke the figures down - \$25,000.00 for the bowling alley, \$12,000.00 for the snack bar, four alleys at \$2,000.00 each and \$4,000. for the existing piling under the two story building.

Q. What depreciation did you use, or did you use depreciation? Oh yes, un hum, for a total depreciation I fixed - - - - that would give a total value of structures and piling of \$49,000.00 and then I took \$16,800. off for depreciation and that would leave a total of \$32,700 for the structures and existing piling salvageable, and to that I added the present -the estimated value of the land of \$23,250.00, which gave me the total I previously mentioned of \$55,950.00. Didn't you testify to that, Mr. Paul?

A. Yes sir, I remember - -

DOCTOR MITCHELL, BEING FIRST DULY SWORN, TESTIFIED:

Examination by Mr. Owens.

Q. Dr. Mitchell, what, in your opinion is the lease hold - - the reasonable market value of the leasehold interest that you held under the Fairhope Single Tax lease?

A. \$23,000.00.

ON CROSS EXAMINATION OF THIS WITNESS, HE TESTIFIED:

Examination by Mr. Stone.

Q. You understood when you signed the application for a lease, and the lease itself, that the rental that you paid to Fairhope Single Tax Corporation was subject to adjustment in each year of the term of the lease to reflect the reasonable rental value, did you not?

MR. OWENS: I object.

MR. STONE: I withdraw the question - I asked him that at the last hearing and he answered and I withdraw that question.

FAIRHOPE SINGLE TAX CORPORATION

ADMINISTERING

FAIRHOPE SINGLE TAX COLONY

ESTABLISHED IN 1895
340 FAIRHOPE AVE.

FAIRHOPE, ALABAMA

Sept. 20, 1966

Dr. George J. Mitchell
1557 Springhill Ave.
Mobile, Alabama

Dear Dr. Mitchell:

Enclosed herewith find our receipt for your \$200.00 remittance which you will note has been credited to the delinquent rent owing on the Casino leasehold.

At the council meeting of last Thursday I reported to the council our telephone conversation in which you stated that you would pay this \$200.00, in a few days as you have done. Also, it is my recollection that you stated when another payment might be expected and that you would pay all that is due on this years account before the end of the year. Please confirm these statements so I may report them to the council.

I went down to the Casino this morning and was pleased to find the doors to the bowling alley room had been repaired and padlocked. I also noted the downstairs doors on the front of the building were closed and posted against entrance. However there was no barrier to the upstairs and it appeared from what I could see that entrance to the downstairs was open on the beach side. We would like to know if there is any property insurance of any nature now effective. I will appreciate an early reply.

Sincerely yours,

C. A. Gaston
C. A. Gaston, Secretary

LEASE

This Lease, MADE THIS 18th DAY OF April, 1958, BY AND BETWEEN
FAIRHOPE SINGLE TAX CORPORATION, OF FAIRHOPE, BALDWIN COUNTY, ALABAMA, AND
Dr. George J. Mitchell

OF Mobile, Alabama, HEREINAFTER DESIGNATED AS THE LESSEE.
WITNESSETH: THAT THE SAID FAIRHOPE SINGLE TAX CORPORATION, FOR AND IN CONSIDERATION OF THE ANNUAL RENTALS AND COVENANTS HEREINAFTER MENTIONED, HAS THIS DAY LEASED TO AND SAID LESSEE TAKEN POSSESSION OF THE FOLLOWING DESCRIBED PORTION OF LAND

TO WIT A lot of land 92½ feet, more or less, in its Easterly and Westerly dimensions by 155 feet, more or less, in its Northerly and Southerly dimensions, the Easterly and Westerly boundaries being parallel to one another and the Northerly and Southerly boundaries being parallel to one another, located at the shore end of Fairhope Wharf and on the North side thereof, being listed in the records of the Fairhope Single Tax Corporation as "Tract A" on Beach, Division one (1) of the land of lessor in the City of Fairhope, Alabama as per its plat thereof filed for record Sept. 13, 1911

Tract 1
SECTION 18, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY ALABAMA, FOR THE TERM OF NINETY-NINE YEARS FROM THIS DATE SUBJECT TO THE CONDITIONS HEREIN STATED AND THE REPRESENTATIONS AND AGREEMENTS OF THE LESSEE IN HIS APPLICATION FOR SAID LAND HERETO ATTACHED AND A PART OF THIS LEASE CONTRACT AS FULLY AS IF PRINTED HEREIN.

(1) The said lessee, his heirs or successors, shall pay to the said Fairhope Single Tax Corporation, its successors or assigns, in equal payments, on the 1st days of January and July of each year, the annual rental value of said land, exclusive of his improvements thereon, to be determined by the said Corporation through its Executive Council or Board of Directors, under the avowed principle of so fixing the rentals of its lands as to equalize the varying advantages of location and natural qualities of different tracts and convert into the treasury of the Corporation for the common benefit of its lessees, all values attaching to such lands, exclusive of improvements thereon. And the said lessee, for himself and his heirs, hereby expressly agrees that the said annual rent shall be determined by the said Corporation upon the principle just stated, and shall be expended by said Corporation, subject to the conditions hereinafter stated.

(2) The land herein leased shall be used for such purposes only as may not be physically or morally offensive to a majority of the resident members of the Fairhope Single Tax Corporation, and the lessee shall be subject to such reasonable sanitary regulations as may be imposed by the Executive Council or Superintendent of Public Health of said Corporation.

(3) In consideration of the agreement of said lessee to pay the rentals herein provided for, the Fairhope Single Tax Corporation will pay all taxes upon the land leased and will accept from the lessee on rent receipts of the County Tax Collector or Clerk of Town of Fairhope, for taxes paid: State, County, School District, or Town, upon the improvements and personal property (monies and credits excluded) held by lessee upon the land herein leased; or, if all rent due is paid, will give him a certificate in amount equal to such acceptable tax receipts remaining, receivable from him at fair value on rent, or in discharge of any indebtedness to the Corporation; provided that said lessee will appoint whomsoever may be designated by the Corporation as his agent to return his property for taxation where permitted by law so to do; that in no event shall the Corporation be bound to accept tax receipts on more than a fair assessed valuation of the property, on the basis required by law, or to a greater amount for any year than the rent for that year on the land on which such improvements and personal property are held.

(4) And the said Fairhope Single Tax Corporation further agrees in consideration of the covenants of the said lessee here-with evidenced, that no part of the rents paid by him upon the land herewith leased, shall be appropriated as dividends to its members or any other persons, but that all shall be administered as a trust fund for the equal benefit of those leasing its lands.

(5) And the said Corporation still further agrees, that in the distribution of the benefits which its purpose is to secure for residents upon its lands, no distinction shall be made between individuals, whether members of the corporation or not, but that with the exception of the right of members as participants in the government of the Corporation, all shall be treated with strict equality.

(6) It is agreed by the parties hereto, that time is of the essence of this contract. All rents not paid within ninety days of the time the same become due, shall be subject to interest at eight per cent per annum until paid; and the lessor shall have a prior lien on all improvements upon the land herein leased, to secure the payment of the rent and for the payment of all other indebtedness of any description whatsoever, by the lessee to the lessor. If the land leased be unimproved, or in the judgment of the Corporation the improvements thereon are not of sufficient value to secure the payment of the rent and cost of collecting same, then, in such event, all rights under this lease shall be subject to forfeiture without notice, after the rents shall have been due and unpaid for ninety days; and the improvements, if any, shall revert to the lessor. Upon failure to pay the rents or any portion thereof for six months after the same become due, the lessor is hereby authorized to sell at public sale the improvements on any household or satisfaction of the amount due, after first giving ten days' notice by one publication in some paper published at Fairhope, Alabama, the cost of such publication and the making of such sale to be paid with the rent out of the proceeds of such sale, and the remainder, if any, to be returned to the lessee or such other person as may be authorized to receive the same. The lessor, its agent or attorney, may conduct such sale and the party so conducting the sale is authorized to make, in the name of the lessee, proper conveyance of the property so sold. The lessee hereby waives all right of exemption of any property as against the collection of any debt due under this contract. The sale of the improvements under legal process shall work a forfeiture of all rights under this lease.

(7) The Fairhope Single Tax Corporation agrees that in case of its dissolution, either by voluntary act of its members or otherwise, and the division of its assets among its members, the said lessee, if a member, shall be entitled to have the land herein described and taxed - or so much of it as he may designate - included in his portion, at its actual value at the time, exclusive of improvements thereon, and if it exceed in value such portion, to purchase the excess at such valuation; if not a member, the lessee may at such time acquire title to the land herein leased by paying to the Corporation its actual value exclusive of improvements upon it.

(8) The Fairhope Single Tax Corporation believes its title to the land herein leased to be good, and will use every proper means in its power to maintain the same; but it is distinctly understood that the Corporation, acting only with the benevolent purpose to secure land and administer it for the benefit of those who may desire its use, shall not be held liable for any losses resulting from defects in its title.

(9) The right is reserved by the Fairhope Single Tax Corporation to resume possession of all or any portion of the land herein described, for public purposes only, on payment of the appraised value of the improvements thereon.

(10) Should it become necessary to determine the value of said land, or of the improvements thereon, in compliance with the provisions of clauses 7, 8 or 9 of this lease, the same shall be determined by three disinterested persons, to be selected as follows: the Corporation and the Lessee each choosing one of three persons named by the other and the third to be selected by the two. Should any Lessee fail to name his arbitrators within thirty days after written notice by registered mail to do so, the Corporation may name an arbitrator for him.

(11) This lease is assignable only to members of the Fairhope Single Tax Corporation, or to persons acceptable to it. The original lease must be returned to the Corporation with any proposed transfer endorsed thereon and, if approved, a new lease will be issued to the transferee.

(12) Surface rights only are hereby leased. All mineral rights are reserved by lessor.

(13) This lease may be terminated by the lessee after six months notice in writing to the Corporation and the payment of all rent due to the end of such six months period. A lessee having filed the required notice of desire to surrender, may dispose of any improvements thereon, (subject to the Corporation's lien for rent) but if not so disposed of, the land shall come to the Corporation, together with any improvements remaining thereon, without any claim of the surrendering lessee on account of such improvements, and the Corporation may decline to accept a partial surrender of a leasehold where the portion surrendered or retained, would not, in its opinion, be desirable to other lessees.

IN WITNESS WHEREOF, THE PARTIES HEREUNTO HAVE SET THEIR HANDS IN DUPLICATE.

THIS 18th DAY OF April, 1958
BY ORDER EX. COUNCIL May 6 & Apr. 17, 1958

FAIRHOPE SINGLE TAX CORPORATION

Dr. George J. Mitchell Lessee By *J. B. Gaskin* President
L. A. Gaskin Secretary

STATE OF ALABAMA)
BALDWIN COUNTY)

I, H. W. Rowe, a Notary Public in and for said State at Large, hereby certify that J. E. Gaston and C. A. Gaston, whose names as President and Secretary of Fairhope Single Tax Corporation, a corporation, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 22nd day of April, 1958.

H. W. Rowe

Notary Public for State at Large

H. W. Rowe, Notary Public
State of Alabama

My Commission Expires June 6 1959

STATE OF ALABAMA, BALDWIN COUNTY
 Recd. 25-1-58
 50.00
 Paid to the following: State Tax
 2.50
 Balance Tax
 47.50
 Judge of Probate
 By 2

STATE OF ALABAMA

Baldwin County

PROBATE COURT

I, HARRY D'OLIVE, Judge of Probate Court in and for said State and County, hereby

certify that the within and foregoing two pages

contain a full, true and complete copy of the Lease agreement between Dr. George
J. Mitchell and Fairhope Single Tax Corporation as recorded in
Deed Book 265, Pages 104-105

as the same appears of record in my office.

Given under my hand and seal of office, this 8th day of November 19 67

Harry D'Olive
Judge of Probate

Mitchell E-14

STATE OF ALABAMA)
COUNTY OF BALDWIN)

FORM 264, PAGE 466

KNOW ALL MEN BY THESE PRESENTS that JOSEPH L. COLLINS, divorced hereinafter called the Grantor, for and in consideration of the sum of Thirteen Thousand Six Hundred and 59/100 (\$13,600.59) Dollars, cash, to me in hand paid by GEORGE J. MITCHELL, hereinafter called the Grantee, the receipt of which is hereby acknowledged, does hereby TRANSFER, GRANT, BARGAIN, SELL and CONVEY unto the said Grantee, the following property situated in the County of Baldwin, State of Alabama, and more particularly described as follows, to-wit:-

That certain indenture of lease dated the 16th day of August, 1949, made, executed and delivered by the Fairhope Single Tax Corporation to W. F. Howie, which said lease was conveyed to the Grantor herein by that certain foreclosure deed from Albert F. Tully, as Auctioneer and as attorney-in-fact for W. F. Howie and his wife, Rose Howie, dated November 18, 1957, and recorded in Deed Book 260, page 70, of the Probate Court Records of Baldwin County, Alabama, which said lease did let to the said W. F. Howie all that certain lot, piece or parcel of land, together with the buildings and improvements thereon erected, in the Town of Fairhope, County of Baldwin, known as the Fairhope Casino, and more particularly bounded and described as follows, to-wit:-

A lot of land 92 1/2 feet, more or less, in its Easterly and Westerly dimensions by 125 feet, more or less, in its Northerly and Southerly dimensions, the Easterly and Westerly boundaries being parallel to one another and the Northerly and Southerly boundaries being parallel to one another, located at the shore end of Fairhope wharf and on the North side thereof, being listed in the records of the Fairhope Single Tax Corporation as "Tract A" on Beach.

ALSO, that certain indenture of lease dated the 7th day of March, 1958, made, executed and delivered by the Fairhope Single Tax Corporation to Joseph L. Collins, which said lease lets to the said Joseph L. Collins the same and identical lot, piece or parcel of land, together with the buildings and improvements thereon erected, heretofore more particularly described.

ALSO, all and singular, those items of personal property located in and on the premises aforesaid including all improvements, fixtures, furnishings, equipment and chattels, a more particular listing and inventory thereof being as follows, to-wit:-

- 1 Back Bar, three mirrors
- 1 Counter
- 12 Stools
- 7 Tables
- 40 Chairs
- 6 Booths
- 1 8' 6" Viking Electric Cooler
- 1 1/2 H.P. Compressor and Motor
- 1 Gas Heater, 6 Burner
- 1 Circulating Heater
- 1 National Cash Register, 121 (2) 3924917
- 3 Fluorescent Lights 36"
- 3 Fluorescent Lights 34"
- 1 40 Gallon automatic water heater
- 1 5-10-5 Stainless Steel Coffee Urn
- 1 Stainless Steel Five Foot Stand
- 5 Venetian Blinds
- 1 Sparkler Filterer Model N 40 serial 2381
- 1 Water Cooler
- 12 Fireproof Water Repellant Table Covers
- 1 Globe Meat Slicer Serial 111508
- 1 Counter
- 1 Pie Case
- 1 Garland Restaurant Range, 6 Burner Griddle Attach.
- 1 Fryolator, Serial 31401, Model 14
- 1 Nets Fryolator
- 1 100' Cubic 6 door Hassman Refrigerator
- 1 3/4 H.P. Motor and Compressor Complete
- 1 Wet Pack Coca Cola Box
- 1 6' Three Compartment Sink, Double Drain Boards
- 1 Hot Water Booster Unit
- 1 Hardwood Table, 3 x 12
- 1 Four Door Refrigerator with Coils
- 2 Venetian Type Windows, 3 x 42 x 16
- 45 Forks
- 29 Knives
- 63 Tea Spoons
- 10 Ice Tea Spoons
- 4 Cocktail forks
- 13 Soup Spoons
- 55 Glass Creamers
- 96 Water Glasses
- 10 Sugar Dispensers
- 8 Salt and Pepper Shakers
- 1 White Bread Box
- 8 Assorted Frying Pans
- 1 Meat Saw
- 1 Rolling Pin
- 2 Spatulas
- 2 Spatulas
- 1 Spatula
- 1 12" Knife
- 1 10" Knife
- 1 Steak Grill Weight
- 4 Large Aluminum Spoons
- 1 Egg Turner
- 140 China Cups
- 127 Saucers
- 41 12" Platters
- 150 10" Plates
- 33 6" Sandwich Plates
- 19 Soup Bowls
- 19 Mustard Service

NEW 264 111467

- 14 Gravy Boats
- 20 Relish Service
- 12 China Peter Pitchers
- 153 Glass Dessert Dishes
- 15 Wicker Baskets
- 2 Small Wooden Molds
- 2 Large Wooden Molds
- 12 Menu Covers
- 1 Set of 20" Scales
- 1- 24" Frying Pan
- 1 10-gallon Heavy Duty Bat
- 2 12" Deep Fryers and Baskets
- 4 2 gallon Aluminum Boilers
- 1 1 gallon Aluminum Boiler
- 1 1 Gallon Aluminum Boiler
- 2 2 x 3 Aluminum Trays
- 2 14 x 18 Aluminum Trays
- 2 Large Ladles
- 2 Small Ladles
- 1 Large Meat Clever
- 1 Small Meat Clever
- 1 25 Radian Pan
- 1 8" Pestle
- 9 8" Wooden Bowls
- 1 Food Chopper
- 1 12" Aluminum Pan
- 1 12" Granite Pan
- 3 Muffin Pans
- 1 14" Sifter
- 1 14" Granite Pan
- 3 8" Granite Pans
- 3 Aluminum Pic Pans
- 7 2 Gal. Crackery Steam Table Inserts
- 3 1 Gal. Crackery Steam Table Inserts
- 1 French Fry Potato Cutter
- 1 Roasting Fire Basket
- 1 Meat Tenderizer
- 1 12" White Rock
- 1 Ice Shaver
- 1 4" Strainer
- 2 14" Wire Whips
- 1 12" Wire Whips
- 1 Rotary Whip
- 2 2' Galvanized Dish Pans
- 2 20" Aluminum Collenders
- 2 Conical Strainers
- 2 Galvanized Pick Up Trays
- 1 Pair Ice Tongs
- 1 12" x 14" Porcelain Tray
- 24 Tables
- 2 Large Tables
- 56 Chairs
- 1 8 1/2 Foot Viking Beer Cooler
- 1 Bob Tail Soda Fountain
- 1 15 foot Electric Cooler
- 1 1 1/2 H.P. Capeland Compressor and Motor
- 1 Back Bar with three Mirrors
- 2 National Cash Registers
- 1 21" Marble Counter Complete
- 23 2 1/2 Gal. Fire Extinguishers
- 5 Fluorescent Lights 36"
- 2 Fluorescent Lights 14"
- 1 Automatic Vending Pop Corn Machine
- 9 Light Fixtures
- 3 Light Fixtures
- 1 Juice Extractor
- 1 Cabinet
- 1 Cigarette Case
- 151 Men's Individual Lockers with Individual Locks
- 160 Ladies' Lockers
- 1 Bench Saw with Motor

Doc 264 rec-459

- 2 Ice Cream Dispensers
- 1 Jig Saw
- 1 General "Buffer", Serial #2141217
- 1 Electric Milk Shaker
- 4 55,000 B.T.U. Gas Circulating Heaters
- 1 Two Wheel Cartterer
- 1 Giant Ice Crusher
- 3 14" Fluorescent Lights
- 1 500 gallon Butane Tank System
- 3 Mirrors, Lavatory, Toilet, Fluorescent Light
- 1 Mirror, Lavatory, Toilet, Urinal, 2 Ceiling Lights
- 1 Masco Public Address System
- 1 Microphone and Stand
- 2 R.C.A. Loud Speakers
- 2 Outside Heavy Duty Water Proof Speakers
- 1 Microphone and Stand
- 1 Brambach Baby Grand Piano
- 1 Piano Stool
- 1 Fluorescent Light
- 2 Fluorescent Lights
- 3 Spot Lights
- 2 Bryant Heaters
- 3 2 1/2 gallon Fire Extinguishers
- 14 Light Fixtures
- 1 Electric Coca Cola Bar
- 1 Wet Bar
- 1 National Cash Register
- 52 Tables
- 100 Chairs
- 150 Coin Bottom Chairs
- 40 Booths
- 1 Counter and Back Bar
- 1 Band Stand and Stage, Draperies and Decorations for Stage
- 200 Ice Bowls
- 50 Large flag Decorations
- 1 Peerless Grill, 24"
- 1 Peerless Grill, 30"
- 1 Marble Top Table
- 1 Westinghouse Elec. Refrigerator
- 1 Lavatory
- 1 Fruit Juice Dispenser
- 1 Storage Cabinet
- 2 Fluorescent Lights, 36"
- 3 Fluorescent Lights, 16"
- 1 11' Model F-C International Harvester Home Freezer

TOGETHER WITH ALL AND SINGULAR, the rights, members, privileges and appurtenances thereunto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD unto the said Grantee, his heirs and assigns, forever.

IN WITNESS WHEREOF I have hereunto set my hand and seal this

9th day of April, 1958.

Joseph L. Collins (SEAL)



STATE OF ALABAMA)

COUNTY OF MOBILE)

W. M. Collins, a Notary Public in
and for said County in said State, do hereby certify that JOSEPH
L. COLLINS, divorced, whose name is signed to the foregoing instru-
ment and who is known to me, acknowledged before me on this day
that, being informed of the contents of said instrument, he
executed the same voluntarily on the day the same bears date.

given under my hand this 9th day of April, 1958.

W. M. Collins
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, BALDWIN COUNTY
Dated 4-17-58 8:45 A.M.

Recorded in book _____ page _____
and I certify that the following Privilege Tax
has been paid

Deed Tax 14.00
Mortgage Tax _____

M. D. Stewart
Judge of Probate
By E.

50064 264 PAGE 470

STATE OF ALABAMA }
Baldwin County

PROBATE COURT

I, HARRY D'OLIVE, Judge of Probate Court in and for said State and County, hereby
certify that the within and foregoing five pages

contain a full, true and complete copy of the Deed from Joseph L. Collins to

George J. Mitchell, recorded in Deed Book 264, pages 466-470

as the same appears of record in my office.

Given under my hand and seal of office, this 26th day of October, 19 67.

Harry D'Olive
Judge of Probate

LEASE

This Lease, MADE THIS 18th DAY OF April, 1958, BY AND BETWEEN
FAIRHOPE SINGLE TAX CORPORATION, OF FAIRHOPE, BALDWIN COUNTY, ALABAMA, AND
Dr. George J. Mitchell

OF Mobile, Alabama, HEREINAFTER DESIGNATED AS THE LESSEE.

WITNESSETH: THAT THE SAID FAIRHOPE SINGLE TAX CORPORATION; FOR AND IN CONSIDERATION OF THE ANNUAL RENTALS AND COVENANTS HEREINAFTER MENTIONED, HAS THIS DAY LEASED TO AND SAID LESSEE TAKEN POSSESSION OF THE FOLLOWING DESCRIBED PORTION OF LAND

TO WIT A lot of land 92 1/2 feet, more or less, in its Easterly and Westerly dimensions by 155 feet, more or less, in its Northerly and Southerly dimensions, the Easterly and Westerly boundaries being parallel to one another and the Northerly and Southerly boundaries being parallel to one another, located at the shore end of Fairhope Wharf and on the North side thereof, being listed in the records of the Fairhope Single Tax Corporation as "Tract A" on Beach, Division one (1) of the land of lessor in the City of Fairhope, Alabama as per its plat thereof filed for record Sept. 13, 1911

Tract 1
SECTION 18, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY ALABAMA, FOR THE TERM OF NINETY-NINE YEARS FROM THIS DATE SUBJECT TO THE CONDITIONS HEREIN STATED AND THE REPRESENTATIONS AND AGREEMENTS OF THE LESSEE IN HIS APPLICATION FOR SAID LAND HERETO ATTACHED AND A PART OF THIS LEASE CONTRACT AS FULLY AS IF PRINTED HEREIN.

(1) The said lessee, his heirs, or successors, shall pay to the said Fairhope Single Tax Corporation, its successors or assigns, in equal payments, on the first days of January and July of each year, the annual rental value of said land, exclusive of his improvements thereon, to be determined by the said Corporation through its Executive Council or Board of Directors, under its avowed principle of so fixing the rentals of its lands as to equalize the varying advantage of location and natural qualities of different tracts and convert into the treasury of the Corporation for the common benefit of its lessees, all values attaching to such lands, exclusive of improvements thereon. And the said lessee, for himself and his heirs, hereby expressly agrees that the said annual rent shall be determined by the said Corporation upon the principle just stated, and shall be expended by said Corporation, subject to the conditions hereinafter stated.

(2) The land herein leased shall be used for such purposes only as may not be physically or morally offensive to a majority of the resident members of the Fairhope Single Tax Corporation, and the lessee shall be subject to such reasonable sanitary regulations as may be imposed by the Executive Council or Superintendent of Public Health of said Corporation.

(3) In consideration of the agreement of said lessee to pay the rentals herein provided for, the Fairhope Single Tax Corporation will pay all taxes upon the land leased and will accept from the lessee on rent receipts of the County Tax Collector or Clerk of Town of Fairhope, for taxes paid to State, County, School District, or Town, upon the improvements and personal property (moneys and credits excepted) held by lessee upon the land herein leased; or, if all rent due be paid, will give him a certificate in amount equal to such acceptable tax receipts remaining, receivable from lessor at face value on rent, or in discharge of any indebtedness to the Corporation; provided that said lessee will appoint whomever may be designated by the Corporation as his agent to return his property for taxation where permitted by law so to do; that in no event shall the Corporation be bound to accept tax receipts on more than a fair assessed valuation of the property, on the basis required by law, or to a greater amount for any year than the rent for that year on the land on which such improvements and personal property are held.

(4) And the said Fairhope Single Tax Corporation further agrees in consideration of the covenants of the said lessee herewith evidenced, that no part of the rents paid by him upon the land herewith leased, shall be appropriated as dividends to its members or any other persons, but that all shall be administered as a trust fund for the equal benefit of those leasing its lands.

(5) And the said Corporation still further agrees, that in the distribution of the benefits which its purpose is to secure for residents upon its lands, no distinction shall be made between individuals, whether members of the corporation or not, but that with the exception of the right of members as participants in the government of the Corporation, all shall be treated with strict equality.

(6) It is agreed by the parties hereto, that time is of the essence of this contract. All rents not paid within ninety days of the time the same become due, shall be subject to interest at eight per cent per annum until paid; and the lessor shall have a prior lien on all improvements upon the land herein leased, to secure the payment of the rent and for the payment of all other indebtedness of any description whatsoever, by the lessee to the lessor. If the land leased be unimproved, or in the judgment of the Corporation the improvements thereon are not of sufficient value to secure the payment of the rent and cost of collecting same, then, in such event, all rights under this lease shall be subject to forfeiture without notice, after the rents shall have been due and unpaid for ninety days; and the improvements, if any, shall revert to the lessor. Upon failure to pay the rents, or any portion thereof, for six months after the same become due, the lessor is hereby authorized to sell at public sale the improvements on any leasehold, for satisfaction of the amount due, after first giving ten days' notice by one publication in some paper published at Fairhope, Alabama, the cost of such publication and the making of such sale to be paid with the rent out of the proceeds of such sale, and the remainder, if any, to be returned to the lessee or such other person as may be authorized to receive the same. The lessor, its agent or attorney, may conduct such sale; and the party so conducting the sale is authorized to make, in the name of the lessee, proper conveyance of the property so sold. The lessee hereby waives all right of exemption of any property as against the collection of any debt due under this contract. The sale of the improvements under legal process shall work a forfeiture of all rights under this lease.

(7) The Fairhope Single Tax Corporation agrees that in case of its dissolution, either by voluntary act of its members or otherwise, and the division of its assets among its members, the said lessee, if a member, shall be entitled to have the land herein described and leased—or so much of it as he may designate—included in his portion, at its actual value at the time, exclusive of improvements thereon, and if it exceed in value such portion, to purchase the excess at such valuation. If not a member, the lessee may at such time acquire title to the land herein leased by paying to the Corporation its actual value exclusive of improvements upon it.

(8) The Fairhope Single Tax Corporation believes its title to the land herein leased to be good, and will use every proper means in its power to maintain the same; but it is distinctly understood that the Corporation, acting only with the benevolent purpose to secure land and administer it for the benefit of those who may desire its use, shall not be held liable for any losses resulting from defects in its title.

(9) The right is reserved by the Fairhope Single Tax Corporation to resume possession of all or any portion of the land herein described, for public purposes only, on payment of the appraised value of the improvements thereon.

(10) Should it become necessary to determine the value of said land, or of the improvements thereon, in compliance with the provisions of clauses 3, 7, or 9, of this lease, the same shall be determined by three disinterested persons, to be selected as follows: the Corporation and the Lessee each choosing one of three persons named by the other and the third to be selected by the two. Should any Lessee fail to name his arbitrators within thirty days after written notice by registered mail to do so, the Corporation may name an arbitrator for him.

(11) This lease is assignable only to members of the Fairhope Single Tax Corporation, or to persons acceptable to it. The original lease must be returned to the Corporation with any proposed transfer endorsed thereon and, if approved, a new lease will be issued to the transferee.

(12) Surface rights only are hereby leased. All mineral rights are reserved by lessor.

(13) This lease may be terminated by the lessee after six months notice in writing to the Corporation and the payment of all rent due to the end of such six months period. A lessee having filed the required notice of desire to surrender, may dispose of any improvements thereon, (subject to the Corporation's lien for rent) but if not so disposed of, the land shall come to the Corporation, together with any improvements remaining thereon, without any claim of the surrendering lessee on account of such improvements, and the Corporation may decline to accept a partial surrender of a leasehold where the portion surrendered or retained, would not, in its opinion, be desirable to other lessees.

IN WITNESS WHEREOF, THE PARTIES HEREUNTO HAVE SET THEIR HANDS IN DUPLICATE,

THIS 18th DAY OF April, 1958

BY ORDER EX. COUNCIL Mar 6 & Apr 17 1958

FAIRHOPE SINGLE TAX CORPORATION

Dr. George J. Mitchell
Lessee

J. B. Gaskin
By

President

L. A. Gaskin
Lessee

L. A. Gaskin

Secretary