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ROBERT R. NAHRGANG, MARJORY
 NAHRGANG, MARIE L. SCHAAF, C.A.
 SIBLEY, JR., JULIA A. SIBLEY,
 JAMES MOSLEY, GERALDINE MOSLEY,
 HERBERT FORSTER, MABEL FORSTER,
 M.E. EATON, DENISE E. EATON,
 FREDERICK A. NASH, HARRIET E.
 NASH, WILLIAM R. COBB, MELBA
 COBB, R.G. HOWELL, MARGARET
 HOWELL, JOHN THOMAS, ETHEL THOMAS,
 B.V. STEVENS, KAY STEVENS,
 PORTER L. SCOTT, JANE SCOTT,
 T.L. DeLORNE, ANNIE RAE DeLORNE,
 D. DONALD DRYER, D. ODGEN MILLER,
 ANN MILLER, A.M. GATES, MARTHA
 GATES, CRAIG SHELDON, ANNIE L.
 SHELDON, ADEL WIGSTROM,

COMPLAINANTS

VS

The City of Fairhope, a Municipal
 Corporation, its servants, agents
 or employees, and ED OVERTON,
 individually and as Mayor of said
 City, WILLIAM RUFFLES, MARVIN O.
 BERGLIN, JOHNNY McDANIEL, BARNEY
 SHULL, and CHARLES BELEW,
 individually and as members of the
 Council of the City of Fairhope;

RESPONDENTS

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA.

IN EQUITY.

CASE NO. _____

filed Dec. 31, 1957

Come the Complainants in the above styled cause and amends their complaint heretofore filed in said cause to read as follows:

ROBERT R. NAHRGANG
 COMPLAINANT

VS

The City of Fairhope, a Municipal
 Corporation, its servants, agents
 or employees, and ED OVERTON,
 individually and as Mayor of said
 City, WILLIAM RUFFLES, MARVIN O.
 BERGLIN, JOHNNY McDANIEL, BARNEY
 SHULL, And CHARLES BELEW,
 individually and as members of the
 Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA.

IN EQUITY.

CASE NO. _____

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes your Complainant and shows unto your Honor as follows:

1. That your Complainant is over the age of 21 years and resides in the corporate limits of the City of Fairhope in Baldwin County, Alabama.
2. That the Respondents, the City of Fairhope is a municipality situate in Baldwin County, Alabama and the other Respondents hereinafter named are each over the age of 21 years and are residents of the City of Fairhope in Baldwin County, Alabama and are acting as officials of the

City of Fairhope to-wit: Ed Overton as Mayor, William Ruffles, Johnny McDahiel, Marvin O. Berglin, Barney Shull and Charles Belew as Council members of said City.

3. That the Council of the City of Fairhope has passed City Ordinance number 247 with section 12 thereof, hereinafter set out being duly incorporated in said Ordinance provided as follows: Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people, a copy of said Ordinance being attached hereto and made a part hereof.

4. That the Council of the City of Fairhope has passed City Ordinance number 248 with a section hereinafter set out being duly incorporated in said Ordinance subsection "C" each of sections 3, 4 and 5, which provided as follows: Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasure and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people, a copy of said Ordinance being attached hereto and made a part hereof.

5. That the said Council has authorized the illegal expenditure of monies collected under said ordinances, in that the said Town of Fairhope through its Council or other agents has begun the construction of the alleged stadium on property not owned by the said City of Fairhope being, to-wit: land obtained by the State of Alabama for school purposes.

6. That the said Council of the City of Fairhope is illegally expending monies collected under said ordinances for public recreation facilities on lands owned by the State of Alabama and presently devoted to school purposes without complying with the requirements of Title 47 Sections 54 and 55 of the 1940 Code of Alabama.

7. That the said Council of the City of Fairhope is illegally expending monies collected under said ordinances contrary to the purposes expressed in said ordinances and contrary to the Community Facility plan adopted by the Fairhope City Planning Committee and the Alabama State Planning and Industrial Development Board, copy attached hereto and made a part hereof.

8. That the said Council is illegally expending monies collected under said ordinances in that the City of Fairhope has begun the construction of erection of a public facility structure in an R-1 Residence Zone which provides only for restricted residential occupation and school and school playground facilities and that a public recreation facility, for general public use in such area is contrary to existing zoning regulations of said municipality, copy of said plat is attached hereto and made a part hereof.

9. That the said Respondents are violating the zoning regulations of the City of Fairhope by erecting upon lands owned by the State of Alabama and presently used as a High School and School playground facility, a public recreational facility; the said zoning regulation restricted the area to R-1 residents and school and school playground usage, by authorizing the erection or construction of a stadium on said school grounds, property of the State of Alabama, for use as a recreational facility for the general public.

10. That the Respondents named herein are illegal expending monies in violation of Ordinances number 247 and 248 as noted in this answer by erecting a permanent structure on lands owned by the State of Alabama without the consent of the proper State official as set forth in Title 47 Sections 54 and 55 of the 1940 Code of Alabama.

11. That the Respondents herein named have by authorizing the erection of a public recreational facility on lands of the State of Alabama purchased by the State of Alabama for use for school purposes and so restricted in the conveying instruments, have violated your Petitioners' constitutional rights in the taking of the property without compensation to-wit: by destroying the privacy and enjoyment of your Petitioners homes through the establishment of a public recreational facility, which will bring crowds in the day time, and in the night time, along and around your Petitioner's home and his adjoining property, and that many and numerous automobiles unusual in an R-1 Residence Zone and contrary to the normal usage of said zone said automobiles would be parked along said streets and damage the properties adjoining same.

12. That the Respondents herein named have by beginning the construction of a stadium for general public use violated your petitioners Robert R. Nahrgang's and Marjory Nahrgang's constitutional rights under the due process clause in that said petitioners had conveyed said property for school purposes and the said respondents without due process and contrary to the contract in said conveyance are

utilizing said property for general public recreational facility a use not included in the conveyance agreement nor considered in determining the consideration paid for said property.

13. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone in said City, have violated Title 37 Section 772 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City without proper procedure.

14. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone in said City, have violated Title 37 Section 777 of the Code of 1940, by attempting to zone piecemeal by changing the use of area zoned under the comprehensive plan for said City.

15. That the said Respondents are authorizing the expenditure of monies illegally, which monies are provided for under Ordinance numbers 247 and 248 of the City of Fairhope upon lands which the City of Fairhope neither owns or controls by legal lease or legal contract; said lands belonging to the State of Alabama having been acquired solely for the purpose of operating a school. Said property having been acquired by deed to the State of Alabama, copy of which is attached hereto and made a part hereof, and the said State of Alabama not having by contract or otherwise granted permission to the City of Fairhope for the use or occupation of said lands, as required by Title 47 Sections 54 and 55 of the 1940 Code of Alabama.

16. For that the said expenditure proposed by the said City Council is not legally authorized in that there were not four legal votes in the Council for the approval of said program as required by law.

17. That there is no contract or provisions between said municipality and the State of Alabama restricting the use of the said stadium to school children and/or school purposes as set forth in said deed of purchase attached hereto and made a part hereof.

18, For that the existing stadium in Fairhope is used jointly by the White and Negro public of that area; there being arrangements for the conversion of the present stadium area into other uses. The erection of a municipally provided stadium on state property will, under existing decisions of the United States Supreme Court provide for the use of the proposed stadium by negroes which use is contrary to long established customs in Alabama, and will constitute a private nuisance to the

residents in the area adjacent to Fairwood Boulevard or on nearby streets in that public gatherings of negroes are loud and noisy accompanied on occasion by boystrous and profane language and by general public disturbance all of which will constitute an unnecessary annoyance and nuisance to your petitioners.

19. For that the location of the alleged stadium is in an R-1 Residence Zone which, being the only such stadium, its use may be obtained by negroes as is the custom with the existing stadium, and such use will constitute a private nuisance to the white residents in that immediate area, and will constitute a private nuisance to the residents in the area adjacent to Fairwood Boulevard or on nearby streets in that public gatherings of negroes are loud and noisy accompanied on occasion by boystrous and profane language and by general public disturbance all of which will constitute an unnecessary annoyance and nuisance to your petitioners.

20. For that the location of the alleged stadium is in an R-1 Residence Zone, the operation of which stadium will constitute a private nuisance since said stadium is being furnished with lighting facilities for use in holding night baseball or football games and other night entertainment or recreation. That the use of said stadium for public recreation facilities in the night time will constitute a nuisance in that the lighting facilities being provided for the said stadium will constitute a nuisance through the negligent erection of such facilities whereby the lights from same not being located with due care will create a glare upon the adjoining property creating a nuisance to the damage, or unnecessary annoyance of the residents near, adjoining or adjacent to the area of said lighting facilities.

21. For that the location of the alleged stadium is in an R-1 Resident Zone, the operation of which stadium for public recreation will constitute a private nuisance since said stadium is not supplied with adequate parking facilities and further your Complainants show unto this Honorable Court that there will be a great number of automobiles being parked in the streets in front of the homes of private residences blocking the streets, and driveways adjacent to said homes and the great volume of traffic to and from said recreational facility which would be required to use the said street in the day time and in the night time would constitute a private nuisance to the said residents and a hazard and great danger to the children of said residents in the nearby streets area along Fairwood Boulevard, the only street serving the alleged

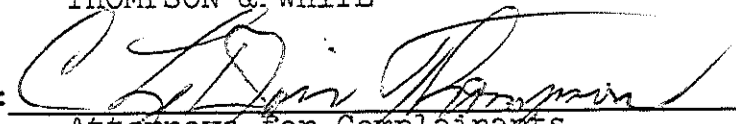
stadium, and further is in violation of Ordinance number 231 of the City of Fairhope, copy attached and made a part hereof.

22. That said real property which the City of Fairhope through its Council is erecting a public recreational facility, was conveyed to the State of Alabama for school purposes, which purposes being stated in the deed of conveyance, copy attached and made a part hereof, restricts the usage of said property to school purposes; therefore the said structure being erected upon the said restricted property which was conveyed by Complainants Robert R. Nahrgang and Marjory Nahrgang to the State of Alabama by said deed for a nominal consideration is in violation of said conveying agreement, hence this petition.

WHEREFORE the premises considered, your Complainant makes the said City of Fairhope, a municipality and Ed Overton, William Ruffles, Marvin O. Berglin, Johnny McDaniel, Barney Shull, and Charles Belew, individually and in their official capacity as Mayor and Council members, parties Respondent to this his bill of complaint, and in order that they have the relief hereinafter prayed for, prays that your Honor will order the state's writ of subpoena to be issued, directly to the said Respondents commanding them to plead answer or demur to this his bill of complaint within the time required by law and the rules of this Honorable Court; and that upon your final hearing your Honor will issue a writ of mandatory injunction commanding the said Respondents named herein to abstain from the operation of a concrete structure to-wit a stadium as a public recreation facility on the school lands, property of the State of Alabama on a portion of which the High School located at Fairhope, Alabama is situated, and permanently enjoining said Respondents individually and as Mayor and members of the Council of the City of Fairhope and the agents or employees of said municipal corporation from expending monies derived from Ordinance numbers 247 and 248 on said property. And further that the said Respondents individually and in their official capacity set out herein be permanently enjoined from expending any monies of the said municipality in the construction of a stadium on the property of the State of Alabama adjoining the said High School located at Fairhope, Alabama. And if mistaken in the relief hereinabove prayed for, your Complainants pray for such other, further and general relief as to which in equity and good conscience they may be entitled.

THOMPSON & WHITE

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BY: 
Attorneys for Complainants.

ORDINANCE No. 247

An Ordinance to Levy License Taxes for the Sale, Storage or Delivery of certain Tobacco Products within the Corporate Limits of the City of Fairhope, and Within the Police Jurisdiction thereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA:

Section 1. DEFINITIONS. Unless the context clearly indicates a different meaning the following words and phrases wherever used in this ordinance shall have the meanings respectively ascribed to them in this section.

"PERSON". A natural person, firm, corporation, club, association, joint stock company, receiver, estate, trustee or any person acting in a fiduciary capacity.

"RETAIL PRICE". The usual retail selling price of the article before adding the amount of the tax assessed herein, or the tobacco tax assessed by the State of Alabama.

"WHOLESALE DEALER and JOBBER". A person who sells or delivers within the City of Fairhope, or its police jurisdiction any tobacco products as hereinafter defined, and all persons operating under a retail dealers license.

"DEALER". Any wholesale or retail dealer as herein defined.

"SMOKER". Any person who ships or causes to be shipped or receives tobacco products into the City of Fairhope, or its police jurisdiction and stores the same in any manner and withdraws or uses the same for any purpose other than for resale or reshipment outside the City and police jurisdiction.

"STAMPS". The word stamps as used herein means the stamp or stamps by the use of which the tax levied under this ordinance is paid.

"TOBACCO PRODUCTS". This term includes cigarettes and smoking tobacco, and any substitute therefor.

"PACKAGE". The individual box or other container from which or in which retail sales of the tobacco products mentioned herein are normally made or intended to be made.

"CITY." The City of Fairhope.

"CORPORATE LIMITS". Corporate limits of the City of Fairhope.

"POLICE JURISDICTION". The territory outside of the corporate limits, but within the police jurisdiction of the City of Fairhope as defined and fixed by the statutes of the State of Alabama.

"SALE". Any transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a consideration, any agreement therefor, including rewards, prizes or premiums or such tobacco products given as a result of operations on punch boards,

shooting galleries and other activities.

The masculine gender shall include the feminine and the neuter genders. Wherever the contract requires, the plural shall include the singular, and the singular the plural. Any words or phrases used in the ordinance and not herein defined which are defined in the Code of Alabama, 1940, Title 51, Section 744 to 791, inclusive, and amendments thereto, shall have the meaning ascribed to them by statute.

Section 2. TAX LEVY IN CITY. That in addition to all other taxes now imposed by law, every person who sells, stores or delivers any tobacco products within the corporate limits of the City or within the police jurisdiction thereof shall pay a license tax to the City and a license tax is hereby fixed and levied, which license tax shall be in the following amounts for the sale, storage or delivery of the following named tobacco products in the corporate limits of the City of Fairhope:

(1) CIGARETTES. All cigarettes made of tobacco or any substitute therefor, two cents (\$.02) for each package containing 20 cigarettes or less.

(2) CIGARETTES. All cigarettes made of tobacco or any substitute therefor, four cents (\$.04) for each package containing more than 20 and not exceeding 40 cigarettes.

(3) CIGARETTES. All cigarettes made of tobacco or any substitute therefor, six cents (\$.06) on each package containing more than 40 cigarettes.

(4) SMOKING TOBACCO. All smoking tobacco, including, granulated, plug cut, crimp cut, rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, each package retailing for five cents or less, one-half cent (\$.005), each package of smoking tobacco retailing for more than five cents each, an additional one-half cent (\$.005), for each five cents or fraction thereof of the retail selling price in excess of five cents. The tax levied by this ordinance shall be paid through the use of stamps herein provided for.

Section 3. TAX LEVY IN POLICE JURISDICTION. Every person selling, delivering or storing any of the tobacco products aforesaid in the police jurisdiction of the City shall pay to the City, and a license tax is hereby fixed and levied, which license tax shall be one-half of the license tax levied under the preceding section on each of the tobacco products mentioned therein.

Section 4. STAMPS. The City Clerk shall keep on hand for sale an adequate quantity of stamps to be affixed to each package of such tobacco products in denominations as required under this ordinance. Each such stamp shall have inscribed thereon the words "City of Fairhope Tobacco Tax", but said words need not be arranged in the foregoing order and may be abbreviated. Said stamps may be sold to the wholesale dealer only by the City Clerk at a price equal to 90 per cent of the full amount thereof, the remaining ten per cent of such full amount representing compensation to the wholesale dealer for the labor of affixing them to the tobacco products enumerated herein. All other persons except wholesale dealers, must pay the full face amount of the stamps; but no person or dealer shall be entitled to purchase any such number of said stamps as would cause the purchase price to include the fraction of a cent.

Section 5. DEALERS. Before any of the aforesaid tobacco products shall be sold or delivered within the corporate limits of said City or police jurisdiction by any dealer, such dealer shall affix to each package of said tobacco, enumerated in Section 2 of this ordinance, a stamp or stamps obtained from the Clerk of the City of Fairhope in the amounts set out in this ordinance in payment of the license taxes imposed by this ordinance. Every dealer shall within one hour after the receipt of any such tobacco products within the city or its police jurisdiction, unless sooner offered for sale, cause stamps to the requisite amount of the tax to be affixed as hereinafter stated and to cause the same to be cancelled by writing or stamping with waterproof ink across the face of each stamp the registered number furnished such dealer by the State Tax Commission. After such stamping has been begun it shall be continued with reasonable diligence by such dealer until all the unstamped tobacco products aforesaid have been stamped and the stamps cancelled as herein provided, but no stamps required to be affixed to any package of the tobacco products aforesaid shall after the same has been affixed as herein provided, be again used in payment of any part of the tax levied under this ordinance. Such stamp shall be affixed in such manner that their removal will require continued application of water or steam. In the case of cigarettes and smoking tobacco sold in retail in packages the stamps shall be affixed to each individual packages in such a way that such stamps shall be torn in two or mutilated when such package is opened.

Section 6. RECORDS. Every wholesale dealer shall at the time of selling or delivering any tobacco products enumerated herein into the City or its police jurisdiction, make a true duplicate invoice of the same which shall show, full and complete, details of the sale or delivery of such tobacco products and shall retain the same subject

to the use and inspection of the City Clerk or his duly authorized deputy for the period of three years. Wholesale and retail dealers shall also keep a record of the purchase, sale, exchange and receipt of all aforesaid tobacco products and hold all books, records, cancelled checks, and all other memoranda pertaining to such purchase, sale, exchange and receipts for the period mentioned herein, subject to the inspection of the City Clerk or his duly authorized deputy, who shall have the power and authority to enter upon the premises of any dealer and to examine such books, records and memoranda at all reasonable times. Any person who purchases or receives in any manner whatsoever, any of the tobacco products enumerated herein which does not have affixed the stamps required by this ordinance shall within three days after receipt of such articles of tobacco, report the receipt and purchase of said tobacco products to the City Clerk giving the date of purchase or receipt, the name and address of the person or firm from whom purchased or received and a list describing the articles of tobacco purchased or received. Such report must be made by registered mail or in person. It shall be unlawful for any person to interfere with or obstruct the City Clerk or such deputy in the exercise of the power and authority conferred by this ordinance.

Section 7. ILLEGAL ACTS. Among others, the following acts and omissions shall be unlawful:

(a) It shall be unlawful for any person required by this ordinance to affix stamps to tobacco products to fail to affix such stamps or to cancel such stamps in the manner or within the time required by this ordinance.

(b) It shall be unlawful for any person to sell, offer for sale, or deliver within the City or its police jurisdiction any tobacco products to which stamps have not been affixed and cancelled as provided by this ordinance.

(c) It shall be unlawful for any dealer to have in his possession or under his control any tobacco products not properly stamped as required by this ordinance for more than six hours after receipt of such products on the premises of such person, provided that this subsection shall not apply to tobacco products in the possession of wholesale dealers or jobbers kept for the purpose of resale or reshipment outside the City and its police jurisdiction and which products are actually so resold or reshipped. The possession of such article or commodity not having the proper stamps affixed thereto as required by this ordinance shall be deemed a separate offense.

(d) It shall be unlawful to manufacture, buy, sell, offer for sale or possess or attempt to do so any reproduction or counterfeit of the stamps provided for in this ordinance or to possess tools, implements, instruments or any material of any kind necessary or appropriate to reproduce or counterfeit such stamps or to alter or cause to be altered any stamps herein provided for.

...alter or cause to be altered any stamps herein provided for. It shall be unlawful to use or cause the same to be used, or to buy, sell, offer for sale, or give away any washed, removed, altered or restored stamp to any person or to have in possession any such washed or removed or restored or altered stamp, or for the purpose of indicating the payment of any tax hereunder to reuse any stamp which has heretofore been used for the payment of any tax provided in this ordinance, or, except as to the City Clerk, to sell any stamp provided for herein.

(f) It shall be unlawful to reuse or refill with any tobacco products any package from which such taxed tobacco products have been removed.

Section 8. APPLICATION

(a) This ordinance shall not be applied so as to impose any unlawful tax or unlawful burden on interstate commerce or any business of the United States Government or any branch or agency thereof.

(b) This ordinance shall not apply to the tobacco products mentioned herein stored by a wholesale dealer for the purpose of resale or reshipment outside the City and its police jurisdiction and which are actually so resold or reshipped.

(c) This ordinance shall not repeal any of the provisions of the License Ordinance of the City but shall be held to be cumulative.

(d) Whenever the requisite amount of stamps has been affixed to the tobacco products as required herein, this ordinance shall not require additional stamps to be affixed thereto in case of subsequent sales, deliveries, or storages, except where the tobacco products taxed hereunder have been stamped with the amount required for the sale in the police jurisdiction and the same are subsequently sold within the corporate limits the required additional amount of stamps shall be attached thereto.

Section 9. SEVERABILITY. Each and every provision of this ordinance is hereby declared to be an independent provision, and the holding of any provision hereof to be void or invalid shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might be held invalid.

Section 10. SAVING PROVISION. No fine, penalty or forfeiture incurred under this ordinance number 247 previous to its repeal, and no proceeding therefor instituted before or after such repeal shall in anyway be affected by such repeal.

Section 11. PENALTY. Any person

violating any of the provisions of this ordinance shall, upon conviction be fined not more than \$100.00 and may be sentenced to hard labor for the City for not more than 30 days, either or both.

Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

Section 13. EFFECTIVE DATE.

This ordinance shall become effective at midnight of May 1, 1957, as soon thereafter as it may under the constitution and laws of the State of Alabama.

Adopted on the 25th day of March, 1957.

Marie Moore, Clerk

Approved this the 25th day of March, 1957.

E. B. Overton, Mayor

Councilman Belew moved that the rules be suspended and unanimous consent be given for immediate consideration of and action on said Ordinance which motion was seconded by Councilman Shull and upon the motion being put to vote the following vote was recorded: Voting Yes: Councilmen Belew, Fleming, McDaniel, Ruffles and Shull. Voting No: None. The Mayor thereupon declared that the motion for unanimous consent for immediate consideration of and action on said Ordinance had been unanimously carried. Councilman McDaniel thereupon moved that the said Ordinance be finally adopted which motion was seconded by Councilman Belew and upon said motion being put to vote the following vote was recorded: Voting Yes: Councilmen Belew, Fleming, McDaniel, Ruffles and Shull. Voting No: None. The Mayor then announced that the motion for adoption of said Ordinance had been unanimously carried and signed the same in approval thereof.

Councilman Shull introduced the following Ordinance which motion was seconded by Councilman Belew:

An Ordinance to be Entitled an Ordinance to amend sections three, four and five of Fairhope Alcoholic Beverage Control Ordinance of April 12, 1937, as Amended by Ordinance No. 180.

BE IT ORDAINED BY THE CITY OF FAIRHOPE, ALABAMA:

FIRST: That sections three, four and five of the Fairhope Alcoholic Beverage Control Ordinance of April 12, 1937, as amended by Ordinance No. 180 be amended to read as follows.

Section 3. WHOLESALER, DISTRIBUTOR AND JOBBER.

(a) There is hereby levied on every person, firm, corporation or association who shall engage in business as a wholesaler, distributor or jobber of malt or brewed beverages of an alcoholic content not in excess of 4% by weight and 5% by volume, in the corporate limits of the City of Fairhope, Alabama, a license or privilege tax to be measured and ascertained as follows: An amount equal to two and one-half cents on each twelve fluid ounces or fraction thereof of such malt or brewed beverages sold or distributed, said amount to be due and payable on or before the 15th day of the calendar month next following such sales or distribution, and if not paid by said date, there shall be added to said amount a penalty of 15% thereof.

(b) Every such wholesaler, distributor and jobber shall before engaging in such business file with the Town Clerk of the City of Fairhope a written statement under oath containing full data regarding the business he intends to carry on, including the location of his business, whether or not such wholesaler, distributor or jobber is a natural person, a corporation, a partnership or association, and if not a natural person, the names of the persons composing the partnership or association, and their residences, and if a corporation, the officers and persons holding the capital stock of the corporation and their residences.

(c) Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasury and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

Section 4. RETAILERS.

(a) There is hereby levied upon all persons, firms, corporations or associations who shall engage in the business of sell, within the corporate limits of the City of Fairhope, Alabama, as a retailer, malt or brewed beverages of an alcoholic content not in excess of 4% by weight and 5% by volume, to be consumed on the premises, or to be carried or delivered to the address of the purchaser, a privilege or license tax to be measured or ascertained as follows: An amount equal to two and one-half cents on each twelve fluid ounces or fractional part thereof of such malt or brewed beverages sold or distributed, to be consumed on the premises or to be carried or delivered to the address of the purchaser, said amount to be due and payable on or before the 15th day of the calendar month next following such sales, and if not paid by said date there shall be added to

said amount a penalty of 15% of such amount.

(b) Any person, firm, corporation or association engaged as a retailer of such malt or brewed beverages purchased in whole from a wholesaler, distributor or jobber on which the tax herein levied has been paid, shall not be required to pay the additional amount of two and one-half cents on each twelve fluid ounces or fractional part thereof; provided, however, that in order to obtain this exemption such retailer must, on or before the 15th day of each month, file with the City Clerk of the City of Fairhope, Alabama, a sworn written statement showing every purchase by such retailer during the preceding calendar month and as well the name of the wholesaler, distributor or jobber from whom the same was purchased, the amount of each purchase and the date of each purchase.

(c) Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasury and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, building and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

Section 5. POLICE JURISDICTION. There is hereby levied upon every person, firm, corporation or association engaging in business as a wholesaler, distributor, jobber or retailer of malt beverages of an alcoholic content not in excess of 4% by weight and 5% by volume, without the corporate limits of the City of Fairhope but within the police jurisdiction thereof, a license or privilege tax in an amount equal to one-half the amount of the license tax levied for engaging in such business within the corporate limits of the City of Fairhope, namely: one and one-fourth cent on each twelve fluid ounces or fraction thereof of such malt or brewed beverages, such license to be paid for in the manner and at the time and place herein specified for engaging in such business within the corporate limits of the city of Fairhope, and such persons, firms, corporations or associations engaging in such business shall be subject to all of the other provisions of this ordinance applicable within the corporate limits of the City of Fairhope.

Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasury and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

SECOND: This ordinance shall become effective on the 1st day of May, 1957.

Adopted on the 25th day of March, 1957.

Marie Moore, Clerk

Approved this 25th day of March, 1957.

E. B. Overton, Mayor.

C
O
P
Y
THE STATE OF ALABAMA
BALDWIN COUNTY

I, G. E. Perkins, a Notary Public, in and for the said County in said State hereby certift that Robert R. Nahrgang whose name is signed to the foregoing conveyance and who is known to me acknowledged before me on this day, that being informed of the contents of the conveyance he @xecuted the same voluntarily on the day the same bears date.

Given under my hand, this the 31st day of December, 1942.

/s/ G. E. Perkins.
Notary Public, Baldwin County, Alabama.

THE STATE OF MICHIGAN
WAYNE COUNTY

I, GRÆDON E. CHESTER, a Notary Public, in and for the said County and State do hereby certify that on the 26th day of December, 1942 came before me the within named Marjory Nahrgang known to me to be the wife of the within named, Robert R. Nahrgang who being by me examined separate and apart from her husband touching her signature to the within deed, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

In Witness Whereof, I have hereto set my hand, this 26th day of December, A.D. 1942.

/s/ Graydon E. Chester.
Notary Public, Wayne County, Michigan.
Comm. expires 12-11-43

STATE OF MICHIGAN
COUNTY OF WAYNE

I, Graydon E. Chester, a Notary Public in and for said County in said State, hereby certify that Marjory Nahrgang, whose name is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day that being informed of the contents of the conveyance she executed the same voluntarily on the day the same bears date.

Given under my hand, this the 26th day of December, 1942.

/s/ Graydon E. Chester.
Notary Public, Wayne County, Michigan.
Comm. expires 12-11-43.

Exhibit "D"

Ordinance No. 231

ZONING ORDINANCE OF THE CITY OF FAIRHOPE, ALABAMA

AN ORDINANCE, IN PURSUANCE OF THE AUTHORITY GRANTED BY TITLE 37, CHAPTER 16, ARTICLES 1 AND 2, SECTIONS 772 TO 785 INCLUSIVE, CODE OF ALABAMA, 1940, TO PROVIDE FOR THE ESTABLISHMENT OF DISTRICTS WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRHOPE, ALABAMA; TO REGULATE WITHIN SUCH DISTRICTS THE HEIGHT, NUMBER OF STORIES, AND SIZE OF BUILDINGS AND OTHER STRUCTURES, THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED, THE SIZE OF YARDS AND OTHER OPEN SPACES, THE DENSITY OF POPULATION AND THE USE OF BUILDINGS, STRUCTURES AND LAND; AND TO PROVIDE METHODS OF ADMINISTRATION OF THIS ORDINANCE AND PENALTIES FOR THE VIOLATION THEREOF.

THE PUBLIC WELFARE REQUIRING IT, be it ordained by the City of Fairhope, Alabama, as follows:

ARTICLE 1 - CLASSIFICATION AND ESTABLISHMENT OF DISTRICTS

SECTION 11. SHORT TITLE

This ordinance shall be known as the "Zoning Ordinance of Fairhope, Alabama," and the map herein referred to, identified by the title "Zoning Map of Fairhope," shall be further identified by the signature of the Mayor of Fairhope, and attested by the City Clerk. The Zoning Map of Fairhope, and all explanatory matter thereon are hereby adopted and made a part of this ordinance. Such map shall be filed in the office of the City Clerk and shall show thereon the date of adoption of this ordinance.

SECTION 12. DISTRICTS

For the purpose of this ordinance the City of Fairhope is hereby divided into the types of districts designated as follows:

- R - 1 RESIDENTIAL DISTRICT (Single Family)
- R - 2 RESIDENTIAL DISTRICT (Multi-Family)
- B - 1 LOCAL BUSINESS DISTRICT
- B - 2 GENERAL BUSINESS DISTRICT
- B - 3 TOURIST-RESORT COMMERCIAL DISTRICT
- M - 1 LIGHT INDUSTRIAL DISTRICT

SECTION 13. DISTRICT BOUNDARIES

The boundaries of the above districts are hereby established as shown on the Zoning Map of the City. Unless otherwise shown on said Zoning Map, the boundaries of districts are lot lines, the center lines of streets or alleys or such lines extended, railroad right-of-way lines, or the corporate limit lines as they existed at the time of enactment of this ordinance. Questions concerning the exact location of district boundary lines shall be decided by the Board of Adjustment.

SECTION 14. USES

In each district no other use other than the types specified as "permitted" or "permitted on appeal", shall be allowed. (See Article 2). Uses specified as "permitted" shall be permitted upon application to the building inspector. Uses specified as "permitted on appeal" are exceptions, and no permit shall be issued for such uses except with the written approval of the Board of Adjustment, and subject to such conditions as said Board may require to preserve and protect the character of the district.

Any use or structure existing at the time of enactment or of subsequent amendment to this ordinance, but not in conformity with its provisions, may be continued with the following limitations. Any use or structure which does not conform to the provisions of this ordinance shall not be:

- a. Changed to another non-conforming use.
- b. Re-established after discontinuance for one year.
- c. Extended except in conformity to this ordinance.
- d. Rebuilt after fire or damage exceeding its full value above the foundation for tax purposes.

SECTION 15. BUILDING LOTS, YARDS, AND OPEN SPACE

In each district each structure hereafter erected or altered shall be provided with the yards specified, and shall be on a lot of the area and width specified in Article 2. No open space or lot required for a building or structure shall during its life be occupied by or counted as open space for another building or structure.

Exceptions to the district requirements for building lots and yards follow:

- a. On any lot of record which at the time of enactment of this ordinance is separately owned, one building and its accessory structures may be built, and the aggregate width of required side yards shall be so reduced that not less than twenty-four (24) feet of the width of the lot be left to build upon.
- b. No building need be set back more than the average of the setbacks of the existing residences within one hundred (100) feet each side thereof.

SECTION 16. HEIGHT

In each district each structure hereafter erected or altered shall not exceed the heights specified in the district requirements, Article 2.

Height limitations shall not apply to church steeples, hospitals, sanitariums, barns, silos, farm structures, chimneys, flag poles, public utility poles, radio and television towers, and serials, cooling towers, water tanks; and industrial structures when required by manufacturing process but not to exceed twenty-five (25) per cent of the area of the lot.

SECTION 17. OFF-STREET AUTOMOBILE STORAGE

In each district each structure hereafter erected or altered shall be provided with off-street automobile storage as specified in the district schedule, Article 2. No off-street automobile storage space required for a building or structure shall during its life be occupied by or counted as off-street automobile space for another building or structure, but may be counted as yard space.

SECTION 18. OFF-STREET LOADING AND UNLOADING

In each business and industrial district each structure hereafter erected or altered shall be provided with off-street loading and unloading facilities as specified in the district schedule, Article 2.

SECTION 19. STRUCTURES

It is the intent of this ordinance that there shall be but one main structure plus any permitted accessory structures on any lot used for residential purposes; also, that accessory structures shall not include living quarters.

ARTICLE 2 - DISTRICT SCHEDULE
SECTION 21 - RESIDENTIAL REQUIREMENTS

DISTRICT	USE REGULATIONS
All "R" DISTRICTS	<p><u>USES PERMITTED</u>: Accessory structures; home occupations; gardens; playgrounds; parks; public schools and libraries.</p> <p><u>USES PERMITTED ON APPEAL</u>: Public utilities; general hospitals for humans; semi-public buildings and uses, including private schools and churches; general farming and horticulture.</p> <p><u>USES PROHIBITED</u>: Commercial and industrial uses, not specifically permitted. Cemetery; funeral chapel or parlor; mausoleums; trailers or trailer camp.</p>
R - 1	<p><u>USES PERMITTED</u>: Single family dwellings.</p> <p>(See also regulations common to all "R" districts, listed above)</p>
R - 2	<p><u>USES PERMITTED</u>: Dwellings and apartments for any number of families.</p> <p><u>USES PERMITTED ON APPEAL</u>: Clubs, not conducted for profit; rooming and boarding houses.</p> <p>(See also regulations common to all "R" districts, listed above)</p>

MINIMUM YARD SIZE			MINIMUM LOT SIZE		MAXIMUM HEIGHT		MAXIMUM BUILDING AREA Per-cent	OFF-STREET PARKING Car Spaces	DISTRICT
FRONT YARD Feet	REAR YARD Feet	SIDE YARD Feet	AREA Sq. Ft.	WIDTH Feet	FEET	STORIES			
PUBLIC AND SEMI-PUBLIC STRUCTURES:									
35	35	35			45	3	50	See note "A" below	All "R" Districts
ACCESSORY STRUCTURES:									
	5	5							
30	35	One side 10; Other side 5.	8,500	60	35	2½	30	One per family; and see Note "A" below	R - 1
25	30	One side 10; Other side 5	One or two family dwelling 6,000 For each additional family unit add: 3,000	50 5	35	2½	35	One per family; and see Note "A" below	R - 2

Note "A": Off-street parking requirements for public and semi-public structures or use are as follows: schools, one car space for each school room; Hospitals, one car space per each three beds; churches and auditoriums, one car space per each five seats. Other public or semi-public use as determined in each individual case by the Board of Adjustment.

ROBERT R. NAHRGANG
Complainant

vs

ED OVERTON, individual and as
Mayor of the City of Fairhope,
a Municipal Corporation, William
RUFFLES, MARVIN O. BERGLIN and
JOHNNY McDANIEL, individually and
as members of the Council of the
City of Fairhope,

Respondents

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

Come the respondents, Ed Overton, individually and as Mayor of the City of Fairhope, and William Ruffles, Marvin O. Berglin and Johnny McDaniel, individually and as members of the Council of the City of Fairhope, and demurring to complainant's complaint as last amended say:

1. There is no equity in the bill.
2. The said bill of complaint alleges no facts upon which this court may grant the relief prayed for.
3. It appears on the face of the complaint that the City of Fairhope is a necessary party thereto and the City of Fairhope is not made a party thereto.
4. It appears that the City of Fairhope is not made a party to this complaint.
5. The entire membership of the Council of the City of Fairhope, namely: Barry Shull and Charles Belew, are not made parties to this bill of complaint.
6. The facts alleged in said bill of complaint show that the erection of the structure sought to be enjoined is within the sound discretion of the City Council of the City of Fairhope and the said complaint alleges no fact of fraud or such abuse of discretion as is tantamount to fraud.
7. For it appears from the allegations of the said complaint that the City of Fairhope is within its power and authority to erect a stadium on high school property owned by the State of Alabama.

8. For it appears from the allegations of the said complaint that said complaint seeks to enjoin the erection of a high school stadium on public school property in the City of Fairhope and does not allege that the Baldwin County Board of Education and the Superintendent of Education of the State of Alabama have not approved and consented to the erection of such athletic stadium.

And specifically demurring to paragraph 5 of said bill of complaint :

(A) That the allegation of the said paragraph is a conclusion of the pleader.

(B) Said paragraph alleges no facts authorizing the court to grant the relief prayed for.

(C) That the matters alleged in said paragraph are insufficient to authorize this court to grant the relief prayed for.

(D) Said paragraph does not allege what illegal acts or illegal expenditures the City Council proposes to make.

(E) Said paragraph does not allege what illegal acts or facts showing it proposes to expend moneys illegally.

And specifically demurring to paragraph 6 of said bill of complaint defendants say:

(A) The facts therein alleged do not show an illegal expenditure of funds.

(B) The facts alleged are insufficient to warrant the relief prayed for.

(C) The complaint does not allege that the construction of an athletic stadium is a sale or lease of State property.

(D) The erection of an athletic stadium does not constitute a sale or lease of state property in violation of Title 47, Sections 54 and 55.

And specifically demurring to paragraph 7 of said bill of complaint defendants say:

(A) That the allegation of the said paragraph is a conclusion of the pleader.

(B) Said paragraph alleges no facts authorizing the court to grant the relief prayed for.

(C) That the matters alleged in said paragraph are insufficient to authorize this court to grant the relief prayed for.

(D) Said paragraph does not allege what illegal acts or illegal expenditures the City Council proposes to make,

(E) Said paragraph does not allege what illegal acts or facts showing it proposes to expend moneys illegally.

And specifically demurring to paragraph 8 of said bill of complaint:

(A) That the said paragraph does not allege facts showing that the expenditure of moneys under the said ordinances in the construction of project in an R-1 Residence Zone would be an illegal expenditure.

(B) That the allegation of the said paragraph is a conclusion of the pleader.

(C) Said paragraph alleges no facts authorizing the court to grant the relief prayed for.

(D) It does not appear from the allegation of the said paragraph that there has ever been set up within the City of Fairhope an R-1 Residential Zone.

(E) It is not alleged that R-1 Zone excludes schools and school facilities.

And specifically demurring to paragraph 9 of the said bill of complaint:

(A) That the allegation of the said paragraph is a conclusion of the pleader.

(B) Said paragraph alleges no facts authorizing the court to grant the relief prayed for.

(C) That the said paragraph does not allege facts showing that the expenditure of moneys under the said ordinances in the construction of a project in an R-1 Residence Zone would be an illegal expenditure.

(D) It does not appear from the allegation of the said paragraph that there has ever been set up within the City of Fairhope an R-1 Residential Zone.

(E) It is not alleged that an R-1 Zone excludes schools and school facilities.

And specifically demurring to paragraph 10 of the said bill of complaint :

(A) That the allegation of paragraph 10 that the respondents authorized the expenditures of moneys in the erection of a permanent structure on lands of the State of Alabama without the consent of the proper State officials is but a conclusion of the pleader.

(B) That the complaint alleges no facts showing that the City Council are authorizing the illegal expenditure of money on property not owned by the City of Fairhope.

(C) That the said paragraph of the bill of complaint alleges no facts showing that the expenditure of moneys collected under ordinances number 247 and 248 on property not owned by the City of Fairhope is an illegal expenditure.

(D) That the allegations of said paragraph do not set up facts upon which this court can grant the relief prayed for.

(E) That the matters alleged in said paragraph are insufficient to authorize this court to grant the relief prayed for.

And specifically demurring to paragraph 11 of the said bill of complaint:

(A) The allegation of said paragraph is a conclusion of the pleader.

(B) That no facts are alleged therein entitling the complainant to the relief prayed for.

(C) That the facts alleged therein do not entitle the complainant to the relief prayed for.

(D) That the allegation of the said complainant does not set out what buildings and structures are permitted in R-1 residential zone.

(D) That it does not appear from the allegation in the said paragraph that the area within which the stadium is being constructed has been lawfully zoned as an R-1 residential zone.

(F) That the allegation of the said paragraph sets up no facts showing that the erection of an athletic stadium is in violation

of any ordinance of the City establishing the area in which the stadium is to be constructed as an R-1 residential zone.

(G) That no facts are alleged in said paragraph showing that the erection of such stadium for school purposes is a violation of petitioner's constitutional rights in taking of property without compensation.

(H) The allegations therein made affirmatively show that the erection of recreational facilities on lands of the State of Alabama for public schools is not the taking of property from the complainant without compensation.

(I) It affirmatively appears therein that no property of complainant is taken by the erection of such athletic stadium.

And specifically demurring to paragraph 12 of the said bill of complaint:

(A) The allegation of said paragraph is a conclusion of the pleader.

(B) That no facts are alleged therein entitling the complainant to the relief prayed for.

(C) That the facts alleged therein do not entitle the complainant to the relief prayed for.

(D) That the allegation of the said complainant does not set out what buildings and structures are permitted in an R-1 residential zone.

(E) That it does not appear from the allegation in the said paragraph that the area within which the stadium is being constructed has been lawfully zoned as an R-1 residential zone.

(F) That the allegation of the said paragraph sets up no facts showing that the erection of an athletic stadium is in violation of any ordinance of the City establishing the area in which the stadium is to be constructed as an R-1 residential zone.

(G) No facts are alleged in said paragraph showing that the erection of a stadium on the property of the State of Alabama violates complainant's constitutional rights under the due process clause.

(H) The allegation of said paragraph affirmatively shows that under the conveyance to the State of Alabama attached to the said complaint that it is legal and proper that a stadium be erected on the lands conveyed thereby.

And specifically demurring to paragraph 13 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 13 those grounds assigned to paragraph 8.

And specifically demurring to paragraph 14 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 14 those grounds assigned to paragraph 8.

And specifically demurring to paragraph 15 of the said bill of complaint:

(A) That the allegation of paragraph 6 that the City Council is attempting to authorize the illegal expenditure of moneys collected under ordinances number 247 and 248 on property not owned by the City of Fairhope is a conclusion of the pleader.

(B) That the complaint alleges no facts showing that the City Council are authorizing the illegal expenditure of money on property not owned by the City of Fairhope.

(C) That the said paragraph of the bill of complaint alleges no facts showing that the expenditure of moneys collected under ordinances number 247 and 248 on property not owned by the City of Fairhope is an illegal expenditure.

(D) That the allegations of said paragraph do not set up facts upon which this court can grant the relief prayed for.

(E) That the matters alleged in said paragraph are insufficient to authorize this court to grant the relief prayed for.

And specifically demurring to paragraph 16 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 16 those grounds assigned to paragraph 15, above.

And specifically demurring to paragraph 17 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 17 those grounds assigned to paragraph 15 above.

And specifically demurring to paragraph 18 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 18 those grounds assigned to paragraph 15 above.

And specifically demurring to paragraph 19 of the said bill of complaint:

(A) That no facts are alleged authorizing the complainant to the relief prayed for.

(B) That the facts alleged affirmatively show that the complainant is not entitled to the relief prayed for.

(C) That the facts alleged do not show that the erection of the athletic stadium would constitute a private nuisance.

And specifically demurring to paragraph 20 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 20 those grounds assigned to paragraph 19 above.

And specifically demurring to paragraph 21 of the said bill of complaint:

Respondents assign as grounds of demurrer to paragraph 21 those grounds assigned to paragraph 19 above.

And specifically demurring to paragraph 22 of the said bill of complaint:

(A) The facts alleged in the said paragraph show that the erection of an athletic stadium on property of the State of Alabama under the conveyance of Robert R. Nahrgang the City of Fairhope had a full and complete right to erect an athletic stadium on such property.

(B) No facts are alleged in the said paragraph showing that the conveyance from Robert R. Nahrgang to the State of Alabama contained any restrictions as to the use of the said property that would preclude the erection of an athletic stadium on the said property.

(C) That the exhibit attached to the said complaint from Robert R. Nahrgang and wife to the State of Alabama affirmatively

shows that there are no restrictions therein precluding the erection of an athletic stadium on the same.

(D) That the allegation in the said paragraph that the conveyance from Robert R. Nahrgang and wife to the State of Alabama of lands on which the stadium is being erected is a conclusion of the pleader and is negated by the conveyance attached to the bill of complaint.

Respectfully submitted,

Beebe & Swearingen

By

W.C. Beebe
Solicitors for Respondents.

filed
Aug 21, 1957
Alvin J. Luck
Register

ROBERT R. NAHRGANT

COMPLAINANT

ED OVERTON, individual and
as Mayor of the City of
Fairhope, a municipal Corp-
oration, WILLIAM RUFFLES,
MARVIN C. BERGLIN and JOHNNY
McDANIEL, individually and
as members of the Council of
the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF
BLADWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. _____

Come the defendants in the above styled cause and move
to strike the bill of complaint in this cause and as grounds
therefore says:

1. ~~There is no equity in the bill of complaint.~~

2. Said bill of complaint alleges no facts upon which
this court may grant the relief prayed for.

filed July 17, 1957
Alice J. Clark, Registrar

046

Beebe & Swearingen

W. C. Beebe

Solicitors for the Defendants

4064

Narghang
vs
Pratt, et al.
Injunction

Metamorphic Strike

FILED

JUL 17 1957

ALICE J. BOCK, Register

AMENDED

ROBERT R. NAHRGANG
COMPLAINANT
VS
ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY McDANIEL, individually and as members of the Council of the City of Fairhope,
RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

CASE NO. _____

Comes the Complainant in the above styled cause and amends his complaint heretofore filed in said cause to read as follows:

ROBERT R. NAHRGANG, MARJOEY NAHRGANG, MARIE L. SCHAAF, C.A. SIBLEY, JR., JULIA A. SIBLEY, JAMES MOSLEY, GERALDINE MOSLEY, HERBERT FORSTER, MABEL FORSTER, M. E. EATON, DENISE E. EATON, FREDERICK A. NASH, HARRIET E. NASH, WILLIAM R. COBB, MELBA COBB, R. G. HOWELL, MARGARET HOWELL, JOHN THOMAS, ETHEL THOMAS, B. V. STEVENS, KAY STEVENS, PORTER L. SCOTT, JANE SCOTT, T. E. DeLORNE, ANNIE RAE DeLORNE, D. DONALD DRYER, D. ODGEN MILLER, ANN MILLER, A.M. GATES, MARTHA GATES, CRAIG SHELDON, ANNIE L. SHELDON, ADELE WIGSTROM,
COMPLAINANTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.
CASE NO. _____

VS

The City of Fairhope, a Municipal Corporation, its servants, agents or employees, and ED OVERTON, individual and as Mayor of said City, WILLIAM RUFFLES, MARVIN O. BERGLIN, JOHNNY McDANIEL, BARNIE SHULL, and CHARLES BELIN, individually and as members of the Council of the City of Fairhope;
RESPONDENTS

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes your Complainant and shows unto your Honor as follows:

- 1. That your Complainants are each over the age of 21 years and reside in the corporation limits of the City of Fairhope in Baldwin County, Alabama.

2. That the Respondents, the City of Fairhope is a municipality situate in Baldwin County, Alabama and the other Respondents hereinafter named are each over the age of 21 years, are residents of the City of Fairhope in Baldwin County, Alabama and are acting as officials of the City of Fairhope to-wit: Ed Overton as Mayor, William Ruffles, Johnny McDaniel, Harvin C. Berglin, Barney Skull and Charles Belaw as Council members of said City and the Recreation Board of the said City and Ernest M. Bailey, George Fage, Walter Poser, E. P. Wakefield and Romeo Simpson, members of said Recreation Board.

3. That the Council of the City of Fairhope has passed City Ordinance number 247 with section 12 hereinafter set out being duly incorporated in said Ordinance provided as follows: Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people, a copy of said Ordinance being attached hereto and made a part hereof.

4. That the Council of the City of Fairhope has passed City Ordinance number 248 with a section hereinafter set out being duly incorporated in said Ordinance provided as follows: Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasure and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people, a copy of said Ordinance being attached hereto and made a part hereof.

5. That the said Council has authorized the illegal expenditure of monies collected under said ordinances, in that the said Town of Fairhope through its Council or other agents has begun the construction of the alleged stadium on property not owned by the said City of Fairhope being, to-wit: land obtained by the State of Alabama for school purposes.

6. That the said Council of the City of Fairhope is illegally expending monies collected under said ordinances for recreation facilities on lands owned by the State of Alabama and presently devoted to school purposes without complying with the requirements of Title 47 Sections 54 and 55.

7. That the said Council of the City of Fairhope is illegally expending monies collected under said ordinances contrary to the purposes expressed in

said ordinances and contrary to the Community Facility plan adopted by the Fairhope City Planning Committee and the Alabama State Planning and Industrial Development Board.

8. That the said Council is illegally expending monies collected under said ordinances in that the City of Fairhope has begun the construction or erection of a public facility structure in an R-1 Residence Zone which provides only for restricted residential occupation and school and school playground facilities and that a public recreation facility, for general public use in such area is contrary to existing zoning regulations of said municipality.

9. That the said Respondents are violating the zoning regulations of the City of Fairhope by erecting upon lands owned by the State of Alabama and presently used as a High School and School playground facility, the said zoning regulation restricted the area to R-1 residents and school and school playground usage, by authorizing the erection or construction of a stadium on said school grounds, property of the State of Alabama, for use as a recreational facility for the general public.

10. That the Respondents named herein are illegally expending monies in violation of Ordinances number 247 and 248 as noted in this answer by erecting a permanent structure on lands owned by the State of Alabama without the consent of the proper State official as set forth in Title 47 Sections 54 and 55 of the 1940 Code of Alabama.

11. That the Respondents herein named have by authorizing the erection of a public recreational facility on lands of the State of Alabama purchased by the State of Alabama for use for school purposes have violated your Petitioners constitutional rights in the taking of the property without compensation to-wit: by destroying the privacy and enjoyment of your Petitioners homes through the establishment of such facility which will bring crowds in the day time and in the night time along and around your petitioner's homes and that many and numerous automobiles unusual in an R-1 Residence Zone and contrary to the normal usage of said zone said automobiles would be parked along said streets and damage the properties adjoining same.

12. That the Respondents herein named have by beginning the construction of a stadium for general public use violated your petitioners Robert R. Nahrgang's and Marjory Nahrgang's constitutional rights under the due process clause in that said petitioners had conveyed said property for school purposes and the said respondents without due process are utilizing said property for general

public recreational facility a use not included in the conveyance agreement nor considered in determining the consideration paid for said property.

13. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone in said City, have violated Title 37 Section 772 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City without proper procedure.

14. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone in said City, have violated Title 37 Section 777 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City.

15. That the said Respondents are authorizing the expenditure of monies illegally, which monies are provided for under Ordinance numbers 247 and 248 of the City of Fairhope upon lands which the City of Fairhope neither owns or controls by lease or contract; said lands belonging to the State of Alabama having been acquired solely for the purpose of operating a school. Said property having been acquired by deed to the State of Alabama, copy of which is attached hereto and made a part hereof, and the said State of Alabama not having by contract or otherwise granted permission to the City of Fairhope for the use or occupation of said lands, as required by Title 47 Sections 54 and 55 of the 1940 Code of Alabama.

16. For that the said expenditure proposed by the said City Council is not legally authorized in that there were not four legal votes in the Council for the approval of said program as required by law.

17. That there is no contract or provisions between said municipality and the State of Alabama restricting the use of the said stadium to school children and/or school purposes as set forth in said deed of purchase attached hereto and made a part hereof.

18. For that the existing stadium in Fairhope is used jointly by the White and Negro public of that area; there being arrangements for the conversion of the present stadium area into other uses. The erection of a municipally provided stadium on state property will, under existing decisions of the United States Supreme Court provide for the use of the proposed stadium by negroes which use is contrary to long established customs in Alabama, and will constitute a private nuisance to the residents in the area adjacent to Fairwood Boulevard or on nearby streets in that public gatherings of negroes are loud and noisy

accompanied on occasion by boystrous and profane language and by general public disturbance all of which will constitute an unnecessary annoyance and nuisance to your petitioners.

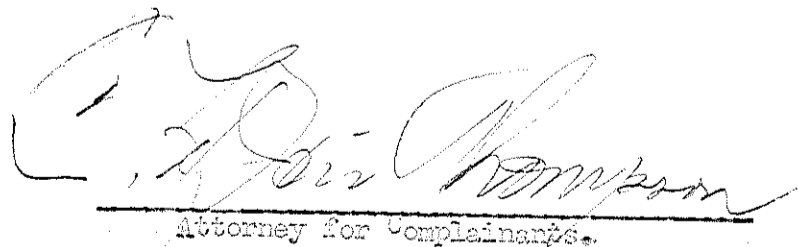
19. For that the location proposed for the erection of the alleged stadium is in an R-1 Residence Zone which, being the only such stadium, its use may be obtained by negroes as is the custom with the existing stadium, and such use will constitute a private nuisance to the white residents in that immediate area, and will constitute a private nuisance to the residents in the area adjacent to Fairwood Boulevard or on nearby streets in that public gatherings of negroes are loud and noisy accompanied on occasion by boystrous and profane language and by general public disturbance all of which will constitute an unnecessary annoyance and nuisance to your petitioners.

20. For that the location proposed for the erection of the alleged stadium is in an R-1 Residence Zone, the operation of which stadium will constitute a private nuisance since said stadium is being furnished with lighting facilities for use in holding night baseball or football games and other night entertainment or recreation. That the use of said stadium for public recreation facilities in the night time will constitute a nuisance in that the lighting facilities being provided for the said stadium will constitute a nuisance through the negligent erection of such facilities whereby the lights from same not being located with due care will create a glare upon the adjoining property creating a nuisance to the damage, or unnecessary annoyance of the residents near, adjoining or adjacent to the area of said lighting facilities.

21. For that the location proposed for the erection of the alleged stadium is in an R-1 Residence Zone, the operation of which stadium for public recreation will constitute a private nuisance since said stadium is not supplied with adequate parking facilities and further your Complainants show unto this Honorable Court that there will be a great number of automobiles being parked in the streets in front of the homes of private residences blocking the streets, and driveways adjacent to said homes and the great volume of traffic to and from said recreational facility which would be required to use the said street in the day time and in the night time would constitute a private nuisance to the said residents and a hazard and great danger to the children of said residents in the nearby streets area along Fairwood Boulevard, the only street serving the alleged stadium.

22. That said real property which the City of Fairhope through its Council is erecting a public recreational facility, was conveyed to the State of Alabama for school purposes, which purposes being stated in the deed of conveyance, copy attached and made a part hereof, restricts the usage of said to school purposes; therefore the said structure being erected upon the said restricted property which was conveyed by Complainants Robert R. Nahrgang and Marjory Nahrgang to the State of Alabama by said deed for a nominal consideration is in violation of said conveying agreement, hence this petition.

WHEREFORE the premises considered, your Complainant makes the said Ed Overton, William Ruffles, Marvin C. Derglin, Johnny McDaniel, Barney Shull, and Charles Belew, parties Respondent to this his bill of complaint, and in order that they have the relief hereinafter prayed for, prays that your Honor will order the state's writ of subpoena to be issued, directly to the said Respondents commanding them to plead answer or demur to this his bill of complaint within the time required by law and the rules of this Honorable Court; and that upon your final hearing your Honor will issue a writ of mandatory injunction commanding the said Respondents named herein to abstain from the erection of a concrete structure to-wit a stadium as a public recreation facility on the school lands, property of the State of Alabama on a portion of which the High School located at Fairhope, Alabama is situated, and permanently enjoining said Respondents individually and as Mayor and members of the Council of the City of Fairhope and the agents or employees of said municipal corporation from expending monies derived from Ordinance numbers 247 and 248 on said property. And further that the said Respondents individually and in their official capacity set out herein be permanently enjoined from expending any monies of the said municipality in the construction of a stadium on the property of the State of Alabama adjoining the said High School located at Fairhope, Alabama. And if mistaken in the relief hereinabove prayed for, your Complainants pray for such other, further and general relief as to which in equity and good conscience they may be entitled.


Attorney for Complainants.

Y STATE OF ALABAMA
BALDWIN COUNTY

That, Robert R. Nahrgang and Marjory Nahrgang, his wife, for and in consideration of the sum of Four Thousand Seven Hundred Twenty-five (\$4725.00) Dollars, paid by the State of Alabama, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do hereby grant, bargain, sell and convey unto the State of Alabama for school purposes the following described real estate situated in District Number 2 for Fairhope School, Baldwin County, State of Alabama, to-wit:

From the Southwest corner of Lot 23, Block 12, all being according to the map of Volanta, Alabama, recorded in Miscellaneous Book No. 1, page 341, signed by Theo. Widell, Surveyor, April 27th, 1914; thence run South 20 Deg. West 361.8 feet along the East margin of Section Street, for a point of beginning; thence South 70 Deg. East 965 feet; thence South 1570 feet, more or less, to the North line of the property of the City of Fairhope in the center of Bayou Charbon; thence Northwesterly up the aforesaid North line of the property of the City of Fairhope to the East margin of the aforesaid Section Street; thence North 50 feet, more or less, to a stake on the East margin of Section Street; Thence North 20 Deg. East 750 feet to the point of beginning; containing 30 acres, more or less, and lying in Section 37 Barron De Ferritt Grant, Township Six South Range two East.

The grantors herein expressly reserve from this conveyance, however, a right-of-way along and over the North twenty (20) feet of the property herein described, and a right-of-way along and over the East twenty (20) feet of the property herein described, for use by themselves, and by any and all other persons owning property abutting thereon, for ingress to and egress from all property abutting thereon.

TO HAVE AND TO HOLD, the aforegranted premises to the said State of Alabama forever in fee simple. And said Robert R. Nahrgang and Marjory Nahrgang, his wife, do hereby covenant and agree with the State of Alabama that we are seized in fee of said premises; that they are free from all encumbrances; that they have a good right to convey the same and that they will warrant and defend the title thereto against the lawful claims to all persons whatsoever.

It is expressly understood that the abandonment of the use of this property for school purposes, shall not affect the title of the State of Alabama or cause the same to revert to the grantors.

IN WITNESS Whereof we have hereunto set our hands and seals this the 26th day of December in the year of our Lord, One Thousand Nine Hundred and 42.

/s/ Robert R. Nahrgang L.S.

/s/ Marjory Nahrgang L.S.

Signed, sealed and delivered in presence of:

Filed 3-31-52 - - - - - 10 a.m.

W. R. Stuart, Judge of Probate

*(fine print) This deed will not be accepted unless accompanied by a plot showing location of land being deeded, giving the dimensions and acreage, together with plot of any adjoining school lands, if any.

C
O
P
Y

The STATE OF ALABAMA
BALDWIN COUNTY

I, G. E. Perkins, a Notary Public, in and for the said County in said State hereby certify that Robert R. Nahrgang whose name is signed to the foregoing conveyance and who is known to me acknowledged before me on this day, that being informed of the contents of the conveyance he executed the same voluntarily on the day the same bears date.

Given under my hand, this the 31st day of December, 1942.

/s/ G. E. Perkins.
Notary Public, Baldwin County, Alabama.

THE STATE OF MICHIGAN
WAYNE COUNTY

I, GRAYDON E. CHESTER, a Notary Public, in and for the said County and State do hereby certify that on the 26th day of December, 1942 came before me the within named Marjory Nahrgang known to me to be the wife of the within named, Robert R. Nahrgang who being by me examined separate and apart from her husband touching her signature to the within deed, acknowledged that she signed the same of her own free will and accord, and without fear, constraint or threats on the part of her husband.

In Witness Whereof, I have hereto set my hand, this 26th day of December, A.D. 1942.

/s/ Graydon E. Chester.
Notary Public, Wayne County, Michigan.
Comm. expires 12-11-43

STATE OF MICHIGAN
COUNTY OF WAYNE

I, Graydon E. Chester, a Notary Public in and for said County in said State, hereby certify that Marjory Nahrgang, whose name is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day that being informed of the contents of the conveyance she executed the same voluntarily on the day the same bears date.

Given under my hand, this the 26th day of December, 1942.

/s/ Graydon E. Chester.
Notary Public, Wayne County, Michigan.
Comm. expires 12-11-43

FILED
AUG 10 1957
ALICE J. DUCK, Register

058

ROBERT R. NAHRGANG, et al,

COMPLAINANTS

VS

E. B. OVERTON, et al,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

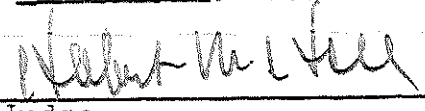
IN EQUITY

NO. _____

This cause being submitted on defendants' demurrer to the bill of complaint as amended, and the same being considered by the court, the court is of the opinion that the demurrer is well taken;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the demurrer filed to the bill of complaint as amended be and the same is hereby sustained, and the complainants are given thirty days in which to amend the bill of complaint.

Done this the 17 day of February, 1959.



Judge

[Faint handwritten notes on the right side of the page]

ROBERT R. NAHRGANG, et al | IN THE CIRCUIT COURT OF
 COMPLAINANTS |
 VS | BALDWIN COUNTY, ALABAMA,
E. B. OVERTON, et al | IN EQUITY
 DEFENDANTS | NO. _____

This cause coming on to be heard and it appearing that the demurrer to the bill of complaint as amended was sustained by this Court February 17th, 1959, and complainants having been given thirty days to amend and not having amended the complaint, and not appearing this day upon the call of the said cause;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said cause be and the same is hereby dismissed, and the costs of court incurred be and the same are hereby taxed against the complainants, for which let execution issue.

Done this the 21st day of April, 1959.

Hubert M. Steel
Judge

AMENDED

ROBERT R. NAHREKANG

COMPLAINANT

VS

ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY McDANIEL, individually and as members of the Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY.

CASE NO. _____

Comes the Complainant in the above styled cause and amends his complaint heretofore filed in said cause to read as follows:

ROBERT R. NAHREKANG

COMPLAINANT

VS

ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY McDANIEL, individually and as members of the Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA IN EQUITY.

CASE NO. _____

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes your Complainant and shows unto your Honor as follows:

1. That he is Robert R. Nahrgang, that he is over the age of 21 years and a citizen and taxpayer of the City of Fairhope in Baldwin County.
2. That the Respondents hereinafter are each over the age of 21 years, are residents of Baldwin County, Alabama and are ~~not~~ elected or personally acting as officials of the City of Fairhope to-wit: Ed Overton as Mayor; William Ruffles, Johnny McDaniel and Marvin O. Berglin as Council members of said City.
3. That the Council of the City of Fairhope has ~~not~~ passed City Ordinance number 247 with Section 12 hereinafter set out being duly incorporated in said Ordinance provided as follows: Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City

of Fairhope and its people.

4. That the Council of the City of Fairhope has ~~passed~~ passed City Ordinance number 248 with a section hereinafter set out being duly incorporated in said Ordinance provided as follows: Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasure and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

5. That said Council has attempted to authorize the illegal expenditure of the said monies collected under the said Ordinances.

6. That said Council has attempted to authorize the illegal expenditure of monies collected under said Ordinances on property not owned by the City of Fairhope.

7. That said Council has attempted to authorize the illegal expenditure of funds collected under said Ordinance for purposes not included in said Ordinance.

8. That said Council has attempted to illegally expend monies collected under said Ordinance on the construction of a project in an R-1 Residence Zone.

9. That the said City Council acting through the Respondents named herein has violated the zoning regulations of the City of Fairhope as to the R-1 Residence Zone adjoining the school ground by authorizing the erection or construction of a concrete structure for a stadium for recreation for the general public.

10. That the Respondents herein named authorized the expenditures of monies in the erection of a concrete structure on lands of the State of Alabama without the consent of the proper State officials.

11. That the Respondents herein named have by authorizing the erection of a structure for general public recreation violated your Petitioners constitutional rights in the taking of property without compensation.

12. That the Respondents herein named have by authorizing the erection of a structure for general public use violated your Petitioners constitutional rights under the due process clause.

13. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone

in said City, have violated Title 37 Section 772 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City.

14. That the Respondents herein named, by authorizing the erection of a structure for general public recreation within an R-1 Residence Zone in said City, have violated Title 37 Section 777 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City.

15. That the said Respondents are authorizing the expenditure of monies illegally, which monies are provided for under Ordinance numbers 247 and 248 of the City of Fairhope upon lands which the City of Fairhope neither owns or controls by lease or contract; said lands belonging to the State of Alabama having been acquired solely for the purpose of operating a school. Said property having been acquired by deed to the State of Alabama and the said State of Alabama not having by contract or otherwise granted permission to the City of Fairhope for the use or occupation of said lands, as required by the 1940 Code of Alabama.

16. For that the said expenditure proposed by the said City Council is not legally authorized in that there were not four legal votes in the Council for the approval of said program as required by law.

17. That there is no contract or provisions between said municipality and the State of Alabama restricting the use of the said stadium to school children and/or school purposes.

18. For that there is no contract between the municipality of Fairhope and the State of Alabama changing the present use provisions for a municipally owned or operated stadium in the City of Fairhope.

19. That the said Council has not advertised for and considered bids from licensed contractors for the erection of a permanent structure as required by law, in the construction of public improvements.

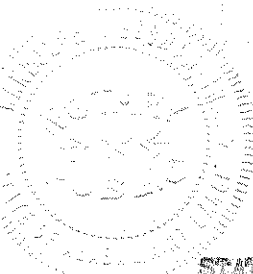
20. That the said Park and Recreation Board or Recreation Board of the City of Fairhope is not legally established with the power to spend public monies for the purpose of erecting a structure on property not owned by the City of Fairhope in accordance with Title 50 Chapter 3 of the 1940 Code of Alabama.

21. For that the existing stadium in Fairhope is used jointly by the White and Negro public of that area; there being arrangements for the conversion of the present stadium area into other uses. The erection of a

municipally provided stadium on state property will, under existing decisions of the United States Supreme Court provide for the use of the proposed stadium by negroes which use is contrary to long established customs in Alabama.

22. For that the location proposed for the erection of the alleged stadium is in an R-1 Residence Zone which, being the only such stadium, its use may be obtained by negroes as is the custom with the existing stadium, and such use will constitute nuisance to the white residents in that immediate area.

WHEREFORE the premises considered, your Complainant makes the said Ed Overton, William Ruffles, Marvin D. Berglin, Johnny McDaniel parties Respondent to this his bill of complaint, and in order that he may have the relief hereinafter prayed for, prays that your Honor will order the state's writ of subpoena to be issued, directly to the said Respondent commanding him to plead answer or demur to this his bill of complaint within the time required by law and the rules of this Honorable Court; and that upon your final hearing your Honor will issue a writ of mandatory injunction commanding the said Respondents named herein to abstain from authorizing the erection of a concrete structure on the school lands, property of the State of Alabama on a portion of which the High School located at Fairhope, Alabama is situated, and permanently enjoining said Respondents individually and as Mayor and members of the Council of the City of Fairhope from expending monies derived from Ordinance numbers 247 and 248 on property not owned or controlled by the said City of Fairhope. And further that the said Respondents individually and in their official capacity set out herein be permanently enjoined from expending any monies of the said municipality in the construction of a stadium on the property of the State of Alabama adjoining the said High School located at Fairhope, Alabama. And if mistaken in the relief hereinabove prayed for, your Complainant prays for such other, further and general relief as to which in equity and good conscience he may be entitled.


Robert R. Dehgan
Complainant

STATE OF ALABAMA
BALDWIN COUNTY

Before me the undersigned authority personally appeared Robert R. Dehgan who being informed of the contents of the foregoing complaint says under oath that according to his information, knowledge and belief same are true and correct.

Robert R. Dehgan
Sworn to and subscribed before me this the 12 day of July, 1957.

Robert M. G. G. G.

ROBERT E. HARRIS

COMPLAINANT

VS

ED OVERTON, individual and as Mayor
of the City of Fairhope, a
Municipal Corporation, WILLIAM
RUFFLES, MARVIN O. BERGLIN and
JOHNNY McDANIEL, individually and
as members of the Council of the City
of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. _____

This cause being submitted to the Court upon application of the complainant for temporary writ of injunction as prayed for in the original bill herein, and upon consideration thereof the Court being of the opinion that the same should be granted:

It is, therefore, ordered, adjudged and decreed by the Court that upon the complainant entering into a good and sufficient bond, conditioned as provided by law, in the sum of _____ dollars (\$ _____), same to be approved by the Register of this Court, that the Register issue a temporary writ of injunction as prayed for in the original bill in this cause.

Done and ordered, this the _____ day of _____, 1957.

Circuit Judge, in Equity Sitting.

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Robert E. Hargrave, et al vs City of Fairhope, Alabama

ROBERT E. HARGRAVE

COMPLAINANT

IN THE CIRCUIT COURT OF
FAIRHOPE COUNTY, ALABAMA

VS

IN EQUITY.

CASE NO. _____

ED OVERTON, individual and as Mayor
of the City of Fairhope, a
Municipal Corporation, WILLIAM
RUFFLES, MARVIN O. BOGLEN and
JOHNNY McDaniel, individually and
as members of the Council of the
City of Fairhope,

RESPONDENTS

The foregoing bill of complaint being presented to the undersigned for
filing and it appearing that no substantial injury will result to the complainant
from delay, it is accordingly ordered that the cause be set down for hearing
in the Equity Division of this Court upon the application for the writ of
injunction prayed for in the bill at 9 o'clock A. M., on the
7th day of August, 1957.

It is further ordered pursuant to the provision of Code 1940, Tit. 7,
section 1054, that the complainant give notice to the respondents Ed Overton,
as Mayor, William Ruffles, Marvin O. Boglen and Johnny McDaniel, as Council
members of the City of Fairhope, of such hearing by serving upon each of them
a copy of the foregoing bill of complaint, together with a copy of this order.

Ordered, this the 16th day of July, 1957.

Hubert M. Hall
Circuit Judge, in Equity sitting.

WIDE 7 INDEX REGISTER
JUL 18 1957

I hereby certify that I have this day mailed a copy of the foregoing amended complaint and order by U. S. Mail, postage prepaid to Honorable W. C. Beebe as attorney for the Respondents.

Dated this the 18th day of July, 1957.

[Handwritten Signature]
Attorney for Complainant

FILED

JUL 20 1957

AUGER & DUCK, Registrar

W. C. Beebe

AMENDED

ROBERT R. NAHNGANG	§	IN THE CIRCUIT COURT OF
COMPLAINANT	§	BALDWIN COUNTY, ALABAMA
VS	§	IN EQUITY.
ED OVERTON, individual and as Mayor	§	CASE NO. _____
of the City of Fairhope, a	§	
Municipal Corporation, WILLIAM	§	
RUFFLES, MARVIN O. BERGLIN and	§	
JOHNNY McDANIEL, individually and	§	
as members of the Council of the	§	
City of Fairhope,	§	
RESPONDENTS	§	

Comes the Complainant in the above styled cause and amends his complaint heretofore filed in said cause to read as follows:

ROBERT R. NAHNGANG	§	IN THE CIRCUIT COURT OF
COMPLAINANT	§	BALDWIN COUNTY, ALABAMA
VS	§	IN EQUITY.
ED OVERTON, individual and as Mayor	§	CASE NO. _____
of the City of Fairhope, a	§	
Municipal Corporation, WILLIAM	§	
RUFFLES, MARVIN O. BERGLIN and	§	
JOHNNY McDANIEL, individually and	§	
as members of the Council of the	§	
City of Fairhope,	§	
RESPONDENTS	§	

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes your Complainant and shows unto your Honor as follows:

1. That he is Robert R. Nahngang, that he is over the age of 21 years and a citizen and taxpayer of the City of Fairhope in Baldwin County.
2. That the Respondents hereinafter are each over the age of 21 years, are residents of Baldwin County, Alabama and are ~~selected~~ elected or personally acting as officials of the City of Fairhope to-wit: Ed Overton as Mayor; William Ruffles, Johnny McDaniel and Marvin O. Berglin as Council members of said City.
3. That the Council of the City of Fairhope has ~~passed~~ passed City Ordinance number 247 with Section 12 hereinafter set out being duly incorporated in said Ordinance provided as follows: Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City

of Fairhope and its people.

4. That the Council of the City of Fairhope has ~~passed~~ passed City Ordinance number 248 with a section hereinafter set out being duly incorporated in said Ordinance provided as follows: Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasure and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.

5. That said Council has attempted to authorize the illegal expenditure of the said monies collected under the said Ordinances.

6. That said Council has attempted to authorize the illegal expenditure of monies collected under said Ordinances on property not owned by the City of Fairhope.

7. That said Council has attempted to authorize the illegal expenditure of funds collected under said Ordinance for purposes not included in said Ordinance.

8. That said Council has attempted to illegally expend monies collected under said Ordinance on the construction of a project in an R-1 Residence Zone.

9. That the said City Council acting through the Respondents named herein has violated the zoning regulations of the City of Fairhope as to the R-1 Residence Zone adjoining the school ground by authorizing the erection or construction of a concrete structure for a stadium for recreation for the general public.

10. That the Respondents herein named authorized the expenditures of monies in the erection of a concrete structure on lands of the State of Alabama without the consent of the proper State officials.

11. That the Respondents herein named have by authorizing the erection of a structure for general public recreation violated your Petitioners constitutional rights in the taking of property without compensation.

12. That the Respondents herein named have by authorizing the erection of a structure for general public use violated your Petitioners constitutional rights under the due process clause.

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in said City, have violated Title 37 Section 772 of the Code of 1940, by attempting to zone piecemeal by changing the use of an area zoned under the comprehensive plan for said City.

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16. For that the said expenditure proposed by the said City Council is not legally authorized in that there were not four legal votes in the Council for the approval of said program as required by law.

17. That there is no contract or provisions between said municipality and the State of Alabama restricting the use of the said stadium to school children and/or school purposes.

18. For that there is no contract between the municipality of Fairhope and the State of Alabama changing the present use provisions for a municipally owned or operated stadium in the City of Fairhope.

19. That the said Council has not advertised for and considered bids from licensed contractors for the erection of a permanent structure as required by law, in the construction of public improvements.

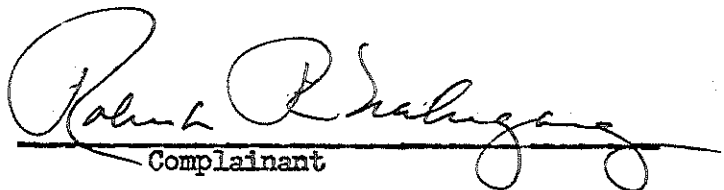
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21. For that the existing stadium in Fairhope is used jointly by the White and Negro public of that area; there being arrangements for the conversion of the present stadium area into other uses. The erection of a

municipally provided stadium on state property will, under existing decisions of the United States Supreme Court provide for the use of the proposed stadium by negroes which use is contrary to long established customs in Alabama.

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WHEREFORE the premises considered, your Complainant makes the said Ed Overton, William Ruffles, Marvin O. Berglin, Johnny McDaniel parties Respondent to this his bill of complaint, and in order that he may have the relief hereinafter prayed for, prays that your Honor will order the state's writ of subpoena to be issued, directly to the said Respondent commanding him to plead answer or demur to this his bill of complaint within the time required by law and the rules of this Honorable Court; and that upon your final hearing your Honor will issue a writ of mandatory injunction commanding the said Respondents named herein to abstain from authorizing the erection of a concrete structure on the school lands, property of the State of Alabama on a portion of which the High School located at Fairhope, Alabama is situated, and permanently enjoining said Respondents individually and as Mayor and members of the Council of the City of Fairhope from expending monies derived from Ordinance numbers 247 and 248 on property not owned or controlled by the said City of Fairhope. And further that the said Respondents individually and in their official capacity set out herein be permanently enjoined from expending any monies of the said municipality in the construction of a stadium on the property of the State of Alabama adjoining the said High School located at Fairhope, Alabama. And if mistaken in the relief hereinabove prayed for, your Complainant prays for such other, further and general relief as to which in equity and good conscience he may be entitled.


Complainant

STATE OF ALABAMA
BALDWIN COUNTY

Before me the undersigned authority personally appeared Robert R. Nahrgang who being informed of the contents of the foregoing complaint says under oath that according to his information, knowledge and belief same are true and correct.

050

Sworn to and subscribed before me this the 12 day of July, 1957.

filed July 18, 1957
Alice J. Sluck, Reg.


Notary Public

ROBERT R. NAHRGANG

COMPLAINANT

VS

ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY McDANIEL, individually and as members of the Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. _____

This cause being submitted to the Court upon application of the complainant for temporary writ of injunction as prayed for in the original bill herein, and upon consideration thereof the Court being of the opinion that the same should be granted:

It is, therefore, ordered, adjudged and decreed by the Court that upon the complainant entering into a good and sufficient bond, conditioned as provided by law, in the sum of _____ dollars (\$ _____), same to be approved by the Register of this Court, that the Register issue a temporary writ of injunction as prayed for in the original bill in this cause.

Done and ordered, this the _____ day of _____, 1957.

Circuit Judge, in Equity Sitting.

ROBERT R. NAHRGANG

COMPLAINANT

VS

ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY MCDANIEL, individually and as members of the Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. _____

The foregoing bill of complaint being presented to the undersigned for fiat and it appearing that no substantial injury will result to the complainant from delay, it is accordingly ordered that the cause be set down for hearing in the Equity Division of this Court upon the application for the writ of injunction prayed for in the bill at 9 o'clock A. M., on the 7 day of Aug, 1957.

It is further ordered pursuant to the provision of Code 1940, Tit. 7, section 1054, that the complainant give notice to the respondents Ed Overton, as Mayor, William Ruffles, Marvin O. Berglin and Johnny McDaniel, as Council members of the City of Fairhope, of such hearing by serving upon each of them a copy of the foregoing bill of complaint, together with a copy of this order.

Ordered, this the 16 day of July, 1957.

FILED
JUL 16 1957
ALICE J. DUCK, Register
ALICE J. DUCK, Register

Robert M. Steen
Circuit Judge, in Equity Sitting.

*7/24/1957
application for temporary
injunction denied*

*all further cases except
Stolley J. not sitting*

I hereby certify that I have this day mailed a copy of the foregoing amended complaint and order by U. S. Mail, postage prepaid to Honorable W. C. Beebe as attorney for the Respondents.

Dated this the 18th day of July, 1957.

[Handwritten Signature]

Attorney for Complainant.

FILED
JUL 18 1957
ALICE H. DUCK, Register

7-18-57

4064

ROBERT R. NAHRGANG

COMPLAINANT

VS

ED OVERTON, individual and as Mayor of the City of Fairhope, a Municipal Corporation, WILLIAM RUFFLES, MARVIN O. BERGLIN and JOHNNY McDANIEL, individually and as members of the Council of the City of Fairhope,

RESPONDENTS

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

CASE NO. 4064

TO THE HONORABLE H. M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Now comes your Complainant and shows unto your Honor as follows:

1. That he is Robert R. Nahrang, that he is over the age of 21 and a citizen and taxpayer of the City of Fairhope in Baldwin County.
2. That the Respondents hereinafter are each over the age of 21 years and are duly elected or personally acting as officials of the City of Fairhope to-wit: Ed Overton as Mayor; William Ruffles, Johnny McDaniel and Marvin O. Berglin as Council members of said City.
3. That the Council of the City of Fairhope have duly passed City Ordinance number 247 with section 12 hereinafter set out being duly incorporated in said Ordinance provided as follows: Section 12. The proceeds from the tax levied by this ordinance when collected shall be and is hereby appropriated to and shall be used for the acquisition of lands, buildings and equipment and facilities for recreational and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.
4. That the Council of the City of Fairhope have duly passed City Ordinance number 248 with a section hereinafter set out being duly incorporated in said Ordinance provided as follows: Three-fifths of the proceeds of the tax levied hereunder shall be covered into the City Treasure and may be used for any municipal purpose. Two-fifths of the proceeds of such tax shall be covered into a fund designated as the "Fairhope Recreational Fund" and shall be used for the acquisition of lands, buildings, and equipment and park purposes and for maintenance, development and operation of recreational facilities and public parks, for the City of Fairhope and its people.
5. That said Council has illegally attempted to authorize the expenditure of the said monies collected under the said Ordinances.
6. That said Council has illegally attempted to authorize the

expenditure of monies collected under said Ordinances on property not owned by the City of Fairhope.

7. That said Council has illegally attempted to authorize the expenditure of funds collected under said Ordinance for purposes not included in said Ordinance.

~~8. That said Council has illegally attempted to the expenditure of monies collected under said Ordinance on the construction of a project in said Ordinance.~~

~~9. That the said City Council acting through the Respondents named herein has violated the zoning regulations of the City of Fairhope as to the Respondents and adjoining the School ground by authorizing the erection and construction of a concrete structure for a stadium for public use.~~

10. That the Respondents herein named authorized the expenditures of monies in the erection of a concrete structure on lands of the State of Alabama without the consent of the proper State officials.

11. That the Respondents herein named have by authorizing the erection of a structure or general public use violated your Petitioners constitutional rights in the taking of property without compensation.

12. That the Respondents herein named have by authorizing the erection of a structure or general public use violated your Petitioners constitutional rights under the due process clause.

13. That the said Respondents are illegally authorizing the expenditure of monies collected under Ordinance numbers 247 and 248 of the City of Fairhope upon lands which the City of Fairhope neither owns nor controls by lease or contract said lands belonging to the State of Alabama having been acquired solely for the purpose of operating a school. Said property having been acquired by deed by the State of Alabama and the said State of Alabama not having by contract or otherwise granted permission to the City of Fairhope for the use or occupation of said lands.

WHEREFORE the premises considered, your Complainant makes the said Ed Overton, William Ruffles, Marvin G. Berglin, Johnny McDaniel parties Respondent to this his bill of complaint, and in order that he may have the relief hereinafter prayed for, prays that your Honor will order the state's writ of subpoena to be issued, directly to the said Respondent commanding him to plead answer or demur to this his bill of complaint within the time required by law and the rules of this Honorable Court; and that upon your final hearing your Honor will issue a writ of mandatory injunction commanding the said Respondents

named herein to abstain from authorizing the erection of a concrete structure on the school lands, property of the State of Alabama on a portion of which the High School located at Fairhope, Alabama is situated, and permanently enjoining said Respondents individually and as Mayor and members of the Council of the City of Fairhope from expending monies derived from Ordinance number 247 and 248 on property not owned or controlled by the said City of Fairhope. And if mistaken in the relief hereinabove prayed for, your Complainant prays for such other, further and general relief as to which in equity and good conscience it may be entitled.

C. L. Davis Thompson
Attorney for Complainant.

STATE OF ALABAMA
BALDWIN COUNTY

Before me the undersigned authority personally appeared C. Leflore Thompson who being informed of the contents of the foregoing complaint says under oath that according to his information, knowledge and belief same are true and correct.

C. Leflore Thompson

Sworn to and subscribed before me this 21st day of June, 1957.

FILED

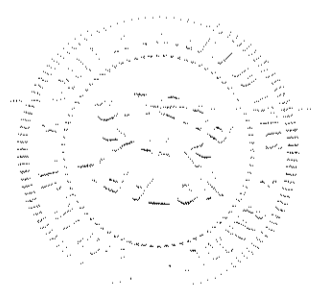
JUN 21 1957

ALICE J. DUCK, Register

Ralph M. K... J.
Notary Public, Baldwin County, Alabama

*Executed 6-27-57
on: Ed Swanton, Mayor
William Ruffles, Council
Marvin Berger, "
Johnnie M. Daniels "*

*Hayler Wilkins, Sheriff
Edleigh Steadham, U.S.*



SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.

}

Circuit Court, Baldwin County

No. 4064

..... TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Comanded to Summon Ed Overton, ind. and as Mayor of the City of Fairhope,

A Municipal Corporation, William Ruffles, Marvin G. Berglin, & Johnny McDaniel, Ind.

and as members of the Council of the City of Fairhope,

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in

the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against.....

Ed Overton, William Ruffles, Marvin G. Berglin & Johnny McDaniel, Defendant.....

by Robert R. Nahrgang

by.....

....., Plaintiff.....

Witness my hand this 22nd day of June 19 57

W. J. ..., Clerk

No. 4064 Page _____

The State of Alabama
Baldwin County

CIRCUIT COURT

~~xxEd Overton~~

ROBERT R. NAHRGANG

Plaintiffs

vs.

ED OVERTON, Ind. as Mayer of City of
Fairhope, William Ruffles, Marvin
Berglin, & Johnnie McDaniels, Ind. &
as Members of City Council of City of
Fairhope. Defendants

Summons and Complaint

Filed 6/22/57 19____

Alice J. Dudd Clerk

C. L. THOMPSON

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at _____

Received In Office

6-22 1957

_____, Sheriff

I have executed this summons

this 6-27 1957

by leaving a copy with

Ed Overton, Mayor
William Ruffles Council
Marvin Berglin Council
Johnnie M. Daniels Council

Sheriff claims 290 miles at 280

Ten Cents per mile Total 2900

TAYLOR WILKINS, Sheriff

BY Ed Overton
DEPUTY SHERIFF

Taylor Wilkins Sheriff

Ed Overton Deputy Sheriff

Fairhope