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CIRCUIT COURT OF  
LEE COUNTY, ALABAMA  
MARY B. ROBERSON, CLERK

**IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA**

DONAHUE LAND LLC,  
AND  
LAKE MARTIN INC,

*Plaintiffs,*

v.

THE CITY OF AUBURN,  
A MUNICIPAL CORPORATION,  
AND  
RON ANDERS, JR., BETH WITTEN,  
LYNDA TREMAINE,  
VERLINDA WHITE, DICK PHELAN,  
IN THEIR INDIVIDUAL CAPACITIES

*Defendants.*

Civil Action No.: CV-2018-

**COMPLAINT AND PETITION FOR WRIT OF MANDAMUS  
TO THE CITY OF AUBURN ALABAMA**

Come now the Plaintiffs and file this, their Complaint pursuant to Title 42 Section 1983 of the United States Code and their Petition for Writ of Mandamus:

**PARTIES**

1. Plaintiff Donahue Land LLC is a Limited Liability Company that does business and owns real estate within the city limits of the city of Auburn Alabama.
2. Plaintiff Lake Martin Inc is a Domestic Corporation that does business and owns real estate within the city limits of the City of Auburn Alabama

3. The Defendant the City of Auburn Alabama is a municipal corporation within the State of Alabama and has adopted a zoning ordinance through which it exerts control over the use and enjoyment of private property
4. Ron Anders Jr resides in the City of Auburn, Lee County, Alabama and is over the age of nineteen (19) years at the filing of this Complaint.
5. Beth Whitten resides in the City of Auburn, Lee County, Alabama and is over the age of nineteen (19) years at the filing of this Complaint.
6. Lynda Tremaine resides in the City of Auburn, Lee County, Alabama and is over the age of nineteen (19) years at the filing of this Complaint.
7. Verlinda White resides in the City of Auburn, Lee County, Alabama and is over the age of nineteen (19) years at the filing of this Complaint.
8. Dick Phelan resides in the City of Auburn, Lee County, Alabama and is over the age of nineteen (19) years at the filing of this Complaint.

**FACTS**

9. The Plaintiff's together own 13.74 acres within the City of Auburn Alabama and zoned by the City of Auburn as Rural (R). The portion of the property owned by Plaintiff Donahue Land LLC is undeveloped at this time and the portion owned by Lake Martin Inc. is a gas station and convenience store.
10. The real estate is located on the southeast corner of the intersection of North Donahue Drive and West Farmville Road with approximately 975 feet along West Farmville Road.
11. The Plaintiff's sought to rezone the property to a zoning consistent with the rest of the

areas present and future development and its best use. The preferred and most appropriate zoning sought was Comprehensive Development District(CDD) zoning.

12. The Plaintiff Donahue Lands LLC was required to invest in excess of \$50,000.00 for commercial sewage facilities that were designed to service developments, other than the Plaintiffs', before a rezoning would be considered for the property
13. The Plaintiff's made application for CDD zoning to the City of Auburn Planning Commission and although there was no viable reason to deny the application it was nonetheless denied.
14. As was the appropriate procedure the Plaintiffs appealed that denial of appropriate zoning to the City Council for the City of Auburn and again it was denied.
15. The City of Auburn Council advised the principal of the Plaintiffs to reapply to the Planning Commission and seek rezoning for a limited commercial zoning, Limited Development District (LDD) zoning and it would be allowed. The Council advised this would be approved.
16. Although this was not what the Plaintiffs desired and was not the best use for the Plaintiffs' land, the Plaintiffs, due to economic hardship from not being allowed to use the property for its highest and best use and after bearing the expense of providing sewage for other developments, applied for (LDD).
17. The planning staff did the proper investigation and approved the rezoning and found no evidence whatsoever to deny the application. Part of the property has been commercial, a convenience store, since before the property was annexed by the City of Auburn in 2009.
18. The Planning Commission with the recommendation of the planning department and

the overwhelming supporting evidence approved that application but the rezoning had to be approved by the City Council.

19. The Plaintiffs again went through the rezoning process before the City Council to seek a change from Rural (R) to LDD even though it was not the zoning the Plaintiffs wanted and not the highest and best use for the Plaintiffs' property.
20. Stating that because the application for rezoning to LDD was in alignment with the future planned land use for the area the planning staff again recommended approval.
21. There was nothing before the council to justify refusal to grant the application and based on the facts and circumstances granting the application was a ministerial act for each council member to vote to grant the Plaintiff's rezoning application.
22. By failing to abide by their ministerial duty and grant the application, the individual Defendants ignored the law and the facts before them acting for personal political reasons rather than in compliance with their public responsibility to follow the law.
23. Defendant Ron Anders Jr. made a statement prior to casting his vote to deny the application admitting that all was in order and there was no viable reason to deny the application, but he was going to vote to deny it anyway because it was an emotional issue. Rather than perform his ministerial function and grant requested zoning that was as a matter of law due to be granted he and the other Defendants acted arbitrarily and capricious and took action to damage the Plaintiffs.
24. The Plaintiffs had a property interest at stake in whether the rezoning was granted or not and the City of Auburn has a policy, pattern, practice and custom of denying the constitutional rights of citizens through the denial of due process in administrative proceedings.

25. The Council for the City of Auburn is the final policy maker for the municipality and therefore the decision to deny the Plaintiffs' application became the policy of the City of Auburn. Violating the constitutional rights of the Plaintiffs.
26. The City of Auburn acted arbitrary and capricious and does so consistently preventing landowners from receiving due process in matters of zoning.
27. The Plaintiffs were damaged as a result of the denial of their Fifth and Fourteenth Amendment Rights of the United States Constitution to be free from a taking of the Plaintiffs' property without payment of just compensation and denial of the Plaintiffs' right to due process.
28. From the reaction of the Council it appeared that prior to the hearing on May 15, 2018 members of the Council had discussed the matter with third parties without participation from the Plaintiffs.

**COUNT I**

**FIFTH AND FOURTEENTH AMMENDMENT VIOLATIONS OF  
PLAINTIFFS' CIVIL RIGHTS  
(TITLE 42 SECTION 1983)**

The Plaintiffs hereby adopt and incorporate herein Paragraphs

1-28 as previously set forth.

29. The Defendants acted under color of law to violate the Plaintiffs' Constitutional right under the Fifth and Fourteenth Amendments to the United States Constitution to be free from the taking of a property interest without payment of just compensation and without being allowed due process of law.

30. The actions of the Defendants provided a vehicle for the taking of the enjoyment of the use of a citizen's private property without just compensation and adequate due process of law, the arbitrary capricious actions of Defendants provide no specific criteria to establish what use is acceptable and what use is not and provide for an exercise of police power without a corresponding public need sufficient to overcome the individual property rights of the aggrieved land owners.
31. At the time the individual Defendants took the culpable action taken the law was clearly established that the denial for personal reasons would be a violation of the Plaintiffs' constitutional rights.

WHEREFORE, the Plaintiffs demand judgment for compensatory damages against the Defendants in an amount to be determined by the Court in excess of the jurisdictional amount of this Court, with costs of litigation including reasonable attorney's fees. (Title 42 section 1988)

## **COUNT II**

### **INJUNCTIVE RELIEF**

The Plaintiffs hereby adopt and incorporate herein Paragraphs

1-31 as previously set forth.

32. As previously set forth the Plaintiffs' applications for rezoning of their property was denied without legal justification and there was no evidence before the Council to justify the denial of CDD zoning.

WHEREFORE the Plaintiffs seek injunctive relief and an order by the Court that the Defendant City of Auburn and the individual Defendants are enjoined from

denying CDD zoning and ordered to comply with the applicable law and to designate such zoning for the subject property, and such other further, additional relief as deemed necessary under the circumstances.

**COUNT III**

**WRIT OF MANDAMUS TO THE  
THE CITY OF AUBURN**

The Plaintiffs hereby adopt and incorporate herein Paragraphs

(1-32) as previously set forth.

33. The Plaintiffs as parties aggrieved by a decision of the City of Auburn City Council denying without justification and supporting evidence the application for CDD zoning and there being no statutory procedure for an appeal of the decision seeks the extraordinary remedy of Mandamus.
34. The Plaintiffs have no other remedy available to redress the Council's failure to perform the ministerial duty to issue to the Plaintiffs proper zoning.

WHEREFORE the Plaintiffs petition the Court to issue a Writ of Mandamus to the City of Auburn and require that its council perform the ministerial act before it and approve CDD zoning for the Plaintiffs and such other further, additional relief as the Court deems fit to grant under the circumstances.

/s/ J. Bernard Brannan, Jr.  
J. BERNARD BRANNAN, JR. (BRA022)  
Attorney for Plaintiffs

OF COUNSEL:

THE BRANNAN LAW FIRM, P.C.

200 South Lawrence St.

Montgomery, Alabama 36104

Telephone: (334) 264-8118

Email: [jbb@brannanlaw.com](mailto:jbb@brannanlaw.com)