

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., et al.
Plaintiffs

v.

MAURICE TOSE, et al.
Defendants

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-02-CV-19-3640

**DAVID DELIA'S ANSWER TO MAURICE B. TOSE'S
FIRST SET OF INTERROGATORIES**

Plaintiff, David Delia ("Plaintiff", by and through his attorneys, Wayne T. Kosmerl, N. Tucker Meneely and Council, Baradel, Kosmerl & Nolan, P.A. and in accordance with Maryland Rule 2-421, hereby provides Plaintiff's answers to Defendant Maurice Tose's ("Defendant") Interrogatories, and states as follows.

INTRODUCTION

A. The information supplied in these Answers is not based solely on the knowledge of the executing party but includes knowledge of agents, representatives and attorneys, unless privileged.

B. The word usage and sentence structure are that of the attorney and does not purport to be the exact language of the executing party.

C. The Interrogatories have been interpreted and answered in accordance with plain English usage, and to the extent not specifically challenged by objection, the definitions and instructions included with the Interrogatories.

D. The executing party expressly reserves the right to file supplemental responses if and when additional information becomes available or known.

GENERAL OBJECTIONS

1. Plaintiff objects to each Interrogatory to the extent it is vague, ambiguous or overly broad.

2. Plaintiff objects to each Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, the self-evaluation privilege, the applicable rules, regulations and statutes of the State of Maryland and/or the United States, or that is otherwise immune from discovery. Inadvertent disclosure of any such information shall not constitute a waiver of any applicable privilege or immunity.

3. Plaintiff objects to each Interrogatory to the extent that it sets forth unsupported legal conclusions or assumes facts not in evidence.

4. Plaintiff generally objects to Defendant's Interrogatories to the extent that the information sought is already in the possession, custody, or control of the Defendant.

5. Plaintiff generally objects to Defendant's Interrogatories to the extent that it seeks information that is a matter of public record, cumulative or duplicative, or is equally obtainable from third parties or from some other source more convenient, less burdensome, or less expensive.

6. Plaintiff generally objects to Defendant's Interrogatories to the extent that they seek information not relevant to the subject matter of this action, nor are reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiff generally objects to Defendant's Interrogatories to the extent that they seek information that is confidential in nature or contain sensitive financial, commercial, proprietary, consumer, trade, or personal information.

8. Plaintiff generally objects to Defendant's Interrogatories to the extent that they, in the context of this particular case, purport to impose obligations beyond those contained in the Maryland Rules of Civil Procedure.

9. Plaintiff generally objects to Defendant's Interrogatories to the extent that they seek full disclosure of Plaintiff's bases for specific claims or defenses prior to the completion of its investigation and discovery.

10. Any statement by Plaintiff that it will produce information shall not be construed as a representation that there is information responsive to a particular Interrogatory, but rather, that Plaintiff will produce responsive information to the extent that it exists.

11. Plaintiff makes no admission of any nature, and no admission may be implied by or inferred from these objections and answers.

12. Plaintiff states that his investigation and the discovery process in this case are ongoing and that additional material information responsive to Defendant's Interrogatories will be provided to the Defendant promptly if it becomes available or by deposition testimony.

ANSWERS

Interrogatory 1. Identify the person(s) answering these interrogatories. Include in your answer the information set forth in Definition (b) (1) and (2) above. Include your role with the Plaintiff, Property Owners Association of Arundel on the Bay, Inc.

Answer:

*David J. Delia, president, POA-AOTB
1375 Walnut Avenue
Annapolis, MD 21403-4741
H: 410-268-8622
C: 443-534-7229
ddelia@comcast.net*

Interrogatory 2. Identify each **person** with whom you consulted, sought advice from, or discussed the preparation of your answers to these interrogatories and identify any **document** which you reviewed in preparing your answers to these interrogatories.

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Without waiving these objections, Susan Cook and counsel were consulted. Plaintiff identifies the documents produced in conjunction with Plaintiff's Response to Request for Production of Documents.

Interrogatory 3. Describe by mailing address, and by lot and block, all property you own or in which you have a property interest in **Arundel on the Bay**. For each property listed,

identify any co- owner(s), state how it is titled, the date of acquisition, the date on which you acquired your interest, and **identify** the holder of any current lien, deed of trust, or mortgage on the property.

Answer:

| | | | |
|-----------------------------------|--|---|--|
| <u>Account Identifier:</u> | District - 02 Subdivision - 002 Account Number - 11528900 | | |
| | | | |
| <u>Owner Name:</u> | DELIA DAVID J DELIA O MARGARET | <u>Use: Principal Residence:</u> | RESIDENTIAL YES |
| <u>Mailing Address:</u> | 1375 WALNUT AVE ANNAPOLIS MD 21403-4741 | <u>Deed Reference:</u> | /08802/ 00162 |
| | | | |
| <u>Premises Address:</u> | 1375 WALNUT AVE ANNAPOLIS 21403-0000 Waterfront | <u>Legal Description:</u> | LT F BK 4 1375 WALNUT AVE ARUNDEL ON THE BAY |
| | | | |
| | | | |

Interrogatory 4. For each property identified in the preceding interrogatory, describe how the property is used and include in your answer the following information:

(a) If the property is used for your personal residential purposes identify

all persons with whom you reside, state that individual’s age and relationship with you; state whether the property is your primary personal residence and, if not, how often and under what circumstances you use the property.

(b) If the property is used for leasing or rental purposes, identify the current tenant(s) of the property and describe how often and under what circumstances the tenant uses the property.

(c) If the property is used for short-term vacation rental or home-sharing purposes, describe how and by whom the property is listed or advertised for rental and describe the number of days the property was rented during the preceding twenty-four (24) month period.

Answer: The property is used for residential purposes only.

Interrogatory 5. For each property identified in the previous interrogatory that you have owned for less than twenty (20) years, identify the prior owner of the property and describe any ongoing relationship you may have with the prior owner.

Answer: N/A

Interrogatory 6. If any of the property identified in response to Interrogatory 4 is contiguous to any paper roads in the community of Arundel on the Bay, set forth the details of any written agreement that address the use of the area of the paper road for individuals who reside in the community. If there is no document setting forth the terms of use, set forth all reasons why the use has never been reduced to a written agreement. Provide a copy of said agreement if one exists.

Answer: See <https://www.arundelonthebay.org/pdf/Use-Agreement-Nov-2014.pdf>.

Interrogatory 7. Identify each person, other than a person intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state the subject matter of the information possessed by that person. (Standard General Interrogatory No. 1.)

Answer: All current and former Association officers and board members and all current and former residents and property owners in Arundel on the Bay have discoverable information regarding the Association's historic and/or current use and maintenance of the platted streets in Arundel-On-The-Bay. All current and former residents and/or property owners of Arundel-On-The-Bay who participated in any Association, Board and/or general meetings including those involving budgeting, road repair and/or use of the platted streets, and/or who have used any of the platted streets, have personal knowledge regarding the Association's policies and practices regarding use, maintenance and control of the streets in Arundel-On-The-Bay. All property owner's mortgagees and/or trustees under their deeds of trust would have discoverable information pertaining to their property interests in the applicable property to which the mortgage or deed of trust would apply within Arundel on the Bay. In addition, the witnesses and parties in the *Coble/Atterbeary*, *Durant* and *McManus* litigations, as well as Plaintiff's counsel and her clients and experts from the *Bellamy* litigation and Ray settlement would also possess such information. Current and former County officials involved in administering the Association's Erosion Control District and Special Community Benefit Taxing District including Carolyn Kirby, Billie Penley and Jessica Leyes have knowledge regarding the Association's control and maintenance of community roads and amenities. Current and/or historical Anne Arundel County officials would have knowledge regarding the installation and/or maintenance of sewer lines and/or other public utilities, and installation and maintenance of County roads, in the platted streets in Arundel-On-The-Bay. Current and/or former County officials have knowledge regarding the Town and Association's conveyance of certain streets and/or easement rights to Anne Arundel County as described in deeds recorded in the land records of Anne Arundel County. Current and former State officials have knowledge of the Association's erosion control

projects and permitting and construction of the Association's community pier and boat launch ramp, as well as community members Susan Cook and Frank Florentine. Dr. Lofton, Barbara Nash, Ed Lee Johnson, Maudella Brown, Dr. Ivy, and/or their families and/or successors in interest, and Plaintiffs' counsel's clients in both the *Bellamy* litigation and *Ray* settlement have knowledge regarding the Association's policies and practices regarding the use and control of community owned streets.

In addition to Plaintiffs, Milton Harrod, Toni Ray, Arend and Lorraine Thomas, III, Richard Grigsby's family members, Aris T. Allen, Jr., Roxanne Veal, Isam Samaan, Yvonne Leacock, Susan Cook, Frank Florentine, Mark and Maureen Donahue, Sandra Barrett, Helen Henson, Philip and Velma Colbert, Michael Postelwaite, James Strum, Alan Hinman, and Victor Wilkerson and all current and former officers and members of the Board of Directors of the Association would have knowledge regarding the history of the use, maintenance and repair of community owned roads and/or roads in which community members have access.

Among the many community members who have accessed Site Area (or whatever you are calling it), the following members have been particularly active:

Bill Keyes – 3459 Rockway

Lori Strum – 3515 Newport

Kathleen McLean – 3510 Rockway

Susan Cook – 3403 Saratoga

Frank Florentine – 3403 Saratoga

Tim Hamiton – 1330 Walnut

Mike Lord – 3557 Narragansett

David Zeman – 1332 Walnut

Marc Apter – 1292 Magnolia

Pam Duncan – 1362 Myrtle

All officers and board members of the Association

Most of the aforementioned individuals' contact information is contained in the Arundel on the Bay Community Directory or is otherwise not known at this time. All individuals and entities in Plaintiffs' chain of title may also have knowledge regarding their titles and/or use of the disputed streets. Brad Robinson of Total Lawn (totallawn2@gmail.com) and Jose Rivas (crivas26@yahoo.com), Carroll Brothers Contracting (tom@carrollbrocontracting.com), Jeff Grabill (Jeff@secondnaturemd.com), Samco Paving (1074 Md-3, Crofton, MD 2114 (410) 721-9210), and Randy Tritt (rtritt66@live.com) have knowledge regarding maintenance, care, and/or improvement of Association-owned and controlled roads, streets and/or street ends. Baltimore Gas and Electric and/or Anne Arundel County officials have knowledge regarding the installation of utility lines and/or street lights on platted streets in Arundel-On-The-Bay. In addition, see the documents produced in response to Plaintiff's Request for Production of Documents. Additional names will be provided as further knowledge of specific names is discovered.

Interrogatory 8. Identify each person you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion, and with respect to an expert whose findings and opinions were acquired in anticipation of litigation or for trial, summarize the qualifications of the expert, state the terms of the publications written by the expert and any written report made by the expert concerning the expert's findings and opinions. (Standard General Interrogatory No. 2.)

Answer: *See Plaintiff's Expert Designation.*

Interrogatory 9. If you intend to rely upon any documents, electronically stored information, or tangible things to support a position you have taken or intend to take in this action, including any claim for damages, provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody or control of them. (Standard General Interrogatory No. 3.)

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Without waiving these objections, counsel for Plaintiff has not yet made a final determination as to what documents, electronically stored information or tangible things Plaintiff will rely upon in this action. At this time, Plaintiff identifies documents being produced in conjunction with Plaintiff's Responses to Request for Production of Documents and any supplemental production of documents thereafter. Plaintiff reserves the right to rely upon any documents produced or identified by any part to this action. Plaintiff further reserves the right to supplement this answer as discovery and this case progresses.

Interrogatory 10. Describe your historic use of the Disputed Street, as set forth in Paragraph 7 of your Complaint, and of the Site Area, as defined in these Interrogatories. Include in your response the dates of, or frequency of your claimed use.

Answer: Since I physically moved to AOTB in June 2003, I have on at least a yearly, and frequently monthly, and occasionally weekly basis, walked or driven along this and every other street end and paper street in AOTB both as a member of the community and later as either an officer or board member of the POA.

Interrogatory 11. Describe all maintenance and improvements that you assert that you

or the Association has performed in the area of the Disputed Street of the Site Area in the past 20 years.

Answer: This street end, along with every other street end and paper street in AOTB has been maintained and/or snow-plowed, and weather-treated as required for as long as I have been associated with the POA.

Interrogatory 12. Set forth all support for your claim that the Disputed Street is a viable or established fire drafting site.

Answer: Although some AOTB street ends are better suited as fire drafting sites (FDS) than others, the POA has formally designated and constructed at least five nearby sites since 2009 in coordination with AA County authorities; however, viability as a FDS is the absolute purview of the AACoFD as the undisputed subject matter expert in this field.

Interrogatory 13. If you contend that any other **person(s)** does or has used the **Disputed Street or the Site Area** within the past twenty (20) years, **identify** the **person(s)** and describe with specificity where, when, under what circumstances, and for what purpose the **person(s)** uses or has used them.

Answer: Plaintiff objects to this Interrogatory which is overly broad and unduly burdensome in the time frame as specified. Without waiving these objections, Plaintiff objects to this Interrogatory which is overly broad and unduly burdensome in the time frame as specified. Without waiving these objections, over the past 20 years numerous members of the community (which by definition includes the Officers and Board Members) have on a yearly, monthly, weekly or even daily basis walked, bicycled or driven along the site Area as well as along the other paper roads (now trails) and around street ends.

Each year the Officers and Board Members conduct a walk through the community to

note if there are any obstructions to community property and then take action if necessary to remedy those violations of community property rights. Maurice Tose' participated in just such a walk on May 8, 2004, with Frank Florentine, noting some encroachments during the tour.

Otherwise, the platted street ends throughout the community are available to community access for normal waterfront activities including, but not limited to, ingress and egress, swimming, boating, fishing, boat watching and other reasonable activities.

Among the many community members who have accessed Site Area (or whatever you are calling it), the following members, in addition to myself, have been particularly active:

Bill Keyes – 3459 Rockway

Lori Strum – 3515 Newport

Kathleen McLean – 3510 Rockway

Susan Cook – 3403 Saratoga

Frank Florentine – 3403 Saratoga

Tim Hamiton – 1330 Walnut

Mike Lord – 3557 Narragansett

David Zeman – 1332 Walnut

Marc Apter – 1292 Magnolia

Pam Duncan – 1362 Myrtle

All officers and board members of the Association

Additional names will be provided as further knowledge of specific names is discovered.

Interrogatory 14. If you contend that the lot owners of Arundel on the Bay have the right to drive vehicles over the Disputed Street or the Site Area to the waters of Fishing Creek, set forth the basis for your assertion.

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Without waiving these objections, the Magnolia Ave street end, west of Saratoga Ave is a gravel-paved street that the POA maintains and it is the only access to the residence of Marc Apter.

Interrogatory 15. Identify with specificity each document that you contend supports the right of each lot owner in Arundel on the Bay to use the Disputed Street or the Site Area for riparian activities.

Answer: Pursuant to Rule 2-421(c), Plaintiff refers to Plaintiff's documents produced in conjunction with Plaintiff's Response to Request for Production of Documents.

Interrogatory 16. Identify each person(s) other than the Defendants, their agents or contractors who have ever performed maintenance work on the Disputed Street or the Site Area. Describe with particularity where, when, and under what circumstances the maintenance has been performed.

Answer: The Association has performed plowing, weather maintenance, gravel paving and occasional grass cutting when required. Plaintiff refers to the Association's document production.

Interrogatory 17. Set forth in detail all conversations that you have had with the Defendants, their relatives or agents concerning the Disputed Street or Site Area.

Answer: Plaintiff objects to this Interrogatory which is overly broad and unduly burdensome in the time frame as specified. Without waiving these objections, Plaintiff does not recall specifics of conversations he has had individually with Defendants, their relatives or agents

concerning the Disputed Street or Site Area. Plaintiff will supplement this response if he recalls any specific conversation and the details thereof.

Interrogatory 18. Identify with specificity the owner of the Disputed Street and the Site Area.

Answer: Property Owner's Association of Arundel on the Bay.

Interrogatory 19. Set forth in detail the amount of money that has been spent on maintaining the Disputed Street or the Site Area over the past 20 years.

Answer: The Association expends money on gravel maintenance and grass cuttings for the Disputed Street and Site Area on a yearly basis. Pursuant to Rule 2-421(c), the Association will produce any records it has relating to expenditures for maintaining the Disputed Street or the Site Area over the past 20 years.

Interrogatory 20. Explain why you are a Plaintiff in this lawsuit. Set forth in your answer if you assert that you have any greater right or greater interest in the Disputed Street or the Site Area than any other person who owns property in Arundel on the Bay, or who is a member of the Association.

Answer: The basis for my participation in this lawsuit is set forth in the Complaint. As a responsible neighbor and current president, it is my duty to help insure unimpeded access to every street and street end in our community to every one of our residents. I do not assert that I have any greater right or interest than any other property owner in Arundel on the Bay.

Interrogatory 21. Explain why you have not included all of the lot owners in the community of Arundel on the Bay as Plaintiffs with you in this lawsuit.

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's

work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Plaintiff further objects and refuses to respond to this Interrogatory as it improperly requests a legal conclusion and otherwise seeks counsel's legal theory of this case, which is not discoverable.

Interrogatory 22. Identify what "well-established principals of Maryland property law" as the phrase is used in Paragraph 30 of your Complaint, supports your right to swim and fish or partake in other waterfront activities from a paper road.

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Plaintiff further objects and refuses to respond to this Interrogatory as it improperly requests a legal conclusion and otherwise seeks counsel's legal theory of this case, which is not discoverable.

Interrogatory 23. Identify any and all support for your assertion that an adjacent property owner is not allowed to park on a paper road of the Arundel on the Bay community. Include in your answer if it is your contention that no other property owners in the community of Arundel on the Bay park on the streets or the paper streets of Arundel on the Bay.

Answer: All of our community streets and street ends are too narrow to support any parking by anyone that would certainly impede the safe and speedy passage of emergency vehicles. The community has codified a policy prohibiting the parking on the streets.

Interrogatory 24. If you have any particular knowledge or qualification in Maryland law or property law that supports your assertions set forth in your answers to these Interrogatories, set forth your applicable qualifications.


Answer: N/A

Interrogatory 25. State all facts and identify all documents that support any claim or defense you have made or intend to make in this action not otherwise set forth in your answers to these interrogatories, and identify all persons with knowledge of those claims or defenses.

Answer: Plaintiff objects to this Interrogatory to the extent that it seeks information or documents that (i) were prepared for or in anticipation of litigation; (ii) constitute attorney's work product; (iii) contain material subject to the attorney/client privilege; or (iv) are protected by any other applicable privilege. Without waiving these objections, Plaintiff refers to the answers provided herein, the answers provided by the other Plaintiffs, and the documents produced in conjunction with Plaintiff's Response to Request for Production of Documents.

VERIFICATION

I, David Delia, am President of the Property Owners Association of Arundel on the Bay, Inc. and am duly authorized to execute this Verification under oath. I hereby swear and affirm under the penalties of perjury that the matters and facts contained herein are true and correct to the best of my personal knowledge, information and belief.



David Delia, Individually and as President of
Property Owners Association of Arundel on the
Bay, Inc.