

STATE OF NORTH CAROLINA

COUNTY OF PENDER

OLDE POINT PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

v.

HARBOUR VILLAGE YACHT CLUB, INC.,

Defendant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 174

**DEFENDANT'S RESPONSES TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS**

The Defendant Harbour Village Yacht Club, Inc. (hereinafter "Defendant" or "Harbour Village") objects and responds to Plaintiff's First Set of Interrogatories and Requests for Production of Documents as follows:

INTERROGATORIES

1. State the name, address, title, and official duties of the person or persons answering these interrogatories on behalf of this Defendant.

ANSWER:

Gregory P. Leighton, Commodore, c/o Andrew K. McVey, Murchison, Taylor & Gibson, PLLC, 1979 Eastwood Rd., Suite 101, Wilmington, NC 28403.

2. The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the Defendant may use to support its claims or defense, unless the use would be solely for impeachment.

ANSWER:

Gregory P. Leighton, c/o Andrew K. McVey, Murchison, Taylor & Gibson, PLLC, 1979  
Eastwood Rd., Suite 101, Wilmington, NC 28403, (910) 763-2426

William Keith, c/o counsel for Plaintiff

Jane Lewis (Treasurer – current) 708 Brown Pelican Lane, Hampstead, NC 28443,  
(410) 703-2394

Kerry Cowen (Treasurer - past) 7402 Songbird Court, Wilmington, NC 28411,  
(614) 581-0732

Allison Williams (Ramp Passes Admin) 1255 Mallard Bay Road, Hampstead, NC 28433,  
(910) 777-4716

Jeanette Miller (Past Ramp Pass Admin) 112 Bellowing Doe Rd., Hampstead, NC 28433,  
(910) 471-4032

Mike Arnold (Past Commodore) 496 Captain Beam Blvd., Hampstead, NC 28443,  
(910) 443-8699

Meg Bardar (Research) 204 Iris Way, Hampstead, NC 28443, (910) 333-1099

Nick Ferrante (Past Commodore) 308 Olde Point Loop, Hampstead, NC 28443,  
(910) 612-4920

Frank Gugino (Secretary) 123 Olde Point Rd., Hampstead, NC 28443, (703) 328-5392

Dennis Maurer (Past Commodore) 102 Bristle Cone Ct., Hampstead, NC 28443,  
(248) 981-8783

Ed Pullen (Past Commodore) 664 Sawgrass Rd., Hampstead, NC 28443, (910) 619-3687

3. If you expect or may call any witness as an expert witness in the trial of this case, state with respect to each expert:

- a. His/her name, address, telephone number and employer;
- b. The field of his/her expertise;
- c. The subject matter upon which he/she is expected to testify;
- d. The information furnished to the expert witness which constitutes the medical care reviewed by such individual.
- e. The date such person was initially contacted by the defendant, or on the defendant's behalf, for the purpose of seeking a expert review of the allegations contained in the Complaint.
- f. The substance of the facts and opinions to which he is expected to testify;
- g. A summary of the grounds for each opinion; and
- h. His/her educational background and experience, which you contend qualifies such person to testify as an expert witness on the matters referred to in your answers to this interrogatory.
- i. The qualifications of the expert witness which establishes compliance with Rule 702 of the North Carolina Rules of Evidence

ANSWER:

Defendant has not yet determined whether it will call any expert witnesses. Defendant will supplement this response, to the extent a response is required by the Rules of Civil Procedure, at the appropriate time.

4. Identify with particularity any report, statement (written or recorded) or memorandum concerning the matters, occurrences or damages referred to in the pleadings which you, your attorney, or anyone acting on your behalf has made or obtained.

ANSWER:

Objection. As framed, the interrogatory purports to require the identification of memoranda prepared by its counsel, which would properly be subject to a claim of attorney work-product privilege. Subject to and without waiving the foregoing objection, Defendant responds as follows: Defendant has previously obtained, filed, and served upon Plaintiff the affidavits of various individuals in connection with the Plaintiff's motion for preliminary injunction. Defendant has obtained no other "report, statement (written or recorded) or memorandum."

5. Identify any and all persons who may be called by Defendant as a witness in this matter.

ANSWER:

Objection. Defendant has no obligation to identify its potential witnesses prior to the entry of a Final Pre-Trial Order. Defendant will supplement its response to this interrogatory at that time.

6. Do you contend that there is not or has ever been in the instant case any type of defect whatsoever with respect to any of the following: Subject matter jurisdiction and personal

jurisdiction, the propriety of this Court's jurisdiction over the person of the Defendant, the propriety of the present venue, the sufficiency of process or sufficiency of process on any of the named Defendants? If so, please explain in as much detail as possible the specific facts supporting any contention of an alleged defect with respect to any of the aforementioned aspects of this lawsuit

ANSWER:

Objection. The interrogatory seeks the mental impressions of Defendant's legal counsel and is therefore outside the ambit of appropriate discovery. Subject to and without waiving the foregoing objection, Defendant responds as follows: Defendant contends Plaintiff lacks representative standing and therefore the Court lacks jurisdiction over the subject matter. The specific facts supporting such contention have been developed in the briefing and argument in support of Defendant's motion to dismiss and for judgment on the pleadings. Defendant does not dispute that the Court has personal jurisdiction, the propriety of Pender County Superior Court has venue, or the sufficiency of process.

7. Describe in detail all laws, acts and regulations having the force and effect of law, codes, regulations and legal principles, standards, and customs or usages, which you contend are applicable to this action.

ANSWER:

Objection. The interrogatory seeks the mental impressions of Defendant's legal counsel and is therefore outside the ambit of appropriate discovery.

8. Identify with particularity whether Defendant has been involved in any other civil litigation during the preceding ten (10) years, including in your answer the names of the parties, the caption of the case, the venue of the litigation, a brief description of the subject matter of the litigation, the date of the filing of the litigation, the date the litigation was concluded, and the ultimate resolution of the litigation (i.e., settlement, judgment).

ANSWER:

Defendant has not been a party to any other civil litigation in the last 10 years. Although the term “involved” is not defined, Defendant has not been involved in any other civil litigation in the last 10 years, as Defendant understands the meaning of the term.

9. Identify the amount paid for the maintenance of the parking lot on the “Parking Lot” tract as identified in the Complaint and for the boat ramp and recreation area as identified in the Complaint as Lot 1 Rev. for each of the last 5 years.

ANSWER:

A spreadsheet setting forth this expense is enclosed herewith.

10. Identify the basis for your contention that Defendant is a successor to any developer of Old Point Development, including but not limited to Olde Point Development Inc., Olde Point Associates Limited Partnership, and Hanley Corporation, and the specific rights and duties Defendant has gained as the successor.

ANSWER:

By virtue of a 1999 deed from Hanley Corporation, a general partner in the entity which developed the Olde Point subdivision, Defendant acquired and presently owns (a) a parcel which functions as a parking lot and is so identified on the map recorded in Map Book 22 at Page 47 of the Pender County Registry and (b) a parcel which houses the Yacht Club boat ramp and clubhouse, described at Lot 1 Rev., Section 1, Olde Point depicted on the same map. The deed is recorded in Book 1516 at Page 116 of the Pender County Registry. As Hanley Corporation's grantee, Defendant acquired all of the rights Hanley Corporation had as owner of the two tracts. Such rights include the right reserved pursuant to Section 13(c) of the Declaration of Restrictive Covenants for Olde Point Development (attached as Exhibit 8 to the Complaint), which allows the Defendant or its successor to construct, lease, operate, and manage any club, marina, or other like facility with associated amenities, upon any Olde Point property not designated as a residential lot, and to establish reasonable fees, rules, and regulations for the use thereof.

11. Identify how the use of Plaintiff or of any Olde Point Development property owner, of Lot 1 Rev and the Parking Lot tract as defined in the Complaint, exceeds the purpose for which those easements and rights were reserved and granted.

ANSWER:

Objection. The interrogatory seeks the mental impressions of legal counsel and therefore falls outside the ambit of permissible discovery. Subject to and without waiving the foregoing objection, Defendant responds that the intended purpose of the easement was to allow Olde Point residents to launch boats and park vehicles, subject to the rights of Defendant, as successor to the

developer, to operate a yacht club and impose reasonable rules, regulations, and charges for the residents' use. Plaintiff's intended use is to operate a yacht club—a right that was not reserved to Plaintiff in the governing documents—and to strip Defendant of its right to impose reasonable rules, regulations, and charges. Thus, the Plaintiff's intended use exceeds the purpose for which the easement was reserved and granted.

12. Identify all correspondence and communications from any former counsel of Plaintiff authorized to act on behalf of Plaintiff regarding any issues raised in the pleadings in this matter.

ANSWER:

Defendant has in its care, custody, and control a March 30, 2006 letter from Jenna Freuchtenicht Butler of Ward and Smith, P.A. to Robert W. Kilroy, a copy of which is enclosed. In addition, Defendant has a January 6, 2006 e-mail opinion of counsel to a "Ms. Jones," believed to be a representative of Plaintiff (also enclosed).

13. Identify all assignments from Olde Point Development, Inc., Olde Point Associates Limited Partnership, Hanley Corporation, Olde Point Property Owner's Association, or any other entity who was or purported to be an Owner, Developer, or their successor, to Harbor Village Yacht Club

ANSWER:

Objection. The term "assignments" is vague and susceptible to more than one



interpretation. If assignments is to be construed to include the conveyance of real property, then reference is made to the deed identified in response to interrogatory #10, pursuant to which, Defendant succeeded to the rights of Hanley Corporation. Defendant is not immediately aware of any other assignment.

14. Describe the structures, fixtures, recreation facilities, utilities, condition, and use of the Parking Lot Tract and Lot 1 Rev as defined in the Complaint when the property was conveyed to Defendant and at the time of the filing of the Answer of Defendant.

ANSWER:

Photos taken at or approximately the time of the conveyance depict a boat landing area ramp with a large gate, a recreation area comprised of a horseshoe pit, along with a decrepit structure comprised of picnic tables and roof, and a small dock on the south side of the parcel. The parking lot looked much the same as it does now, except that landscaping, a shed, curbing, and a driveway into the parking lot have been added.

15. Identify all services, benefits, or facilities provided by Defendant to its members that are not available to Olde Point Development property owner non-members and are not included in the rights of Olde Point Development property owners to the Parking Lot tract and Lot 1 Dev. as defined in the Complaint.

ANSWER:

With the exception of attendance at fee-based social events without an invitation, all

services, benefits, and facilities made available to members of the Defendant are available to Olde Point Development property owner non-members. As developed in response to interrogatory #17, Defendant's members and Olde Point Development property owner non-members pay different fees with respect to some services, benefits, and facilities.

16. Identify the reasonable maintenance fees calculated by Defendant for the Parking Lot tract and Lot 1 Dev. as defined in the Complaint for the last five years and describe how the fees were calculated.

ANSWER:

Reference is made to the same spreadsheet provided in response to interrogatory #9 and to the enclosed vendor quotes which accompanied a proxy form for outlining three options for boat ramp repair and replacement.

17. Identify the required dues for members of Defendant for the last five years and describe how those dues were calculated.

ANSWER:

Members pay annual dues of \$235 (increased from \$225 in 2019) plus a \$175 community service fee, the latter of which is waived if the member provides six hours of community service for the benefit of the Defendant club. During the COVID-19 pandemic, in 2020 and 2021, the community service fee was waived. Club members may rent the clubhouse for the sum of \$80 per day. The same benefit is afforded to non-members for the sum of \$400 per day.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents referenced, referred to or used in your Answers to Plaintiff's First Set of Interrogatories.

RESPONSE:

Responsive documents are produced herewith.

2. All homeowner's or liability insurance policies, including but not limited to, all primary, excess, tiered, company percentage participation, and/or umbrella policies.

RESPONSE:

Responsive documents are produced herewith.

3. A copy of all documents, electronically stored information, and tangible things that Defendant has in their possession, custody, or control and may use to support their claims or defenses, unless the use would be solely for impeachment.

RESPONSE:

Responsive documents are enclosed. Defendant will supplement this response as additional documents become available.

4. Any and all reports submitted, prepared, made or rendered by any expert relating to the matters set forth in the pleadings.

RESPONSE:

Defendant has not yet determined whether Defendant will retain experts. Defendant will supplement its response if it does so.

5. Each and every document which you intend to introduce as an exhibit and/or use at the trial of this case.

RESPONSE:

Objection. Defendant has no obligation to provide these documents prior to the entry of a final Pre-Trial Order.

6. All demonstrative evidence of or things which you intend to use in any manner, or introduce as an exhibit, at the trial of this case

RESPONSE:

Objection. Defendant has no obligation to provide these documents prior to the entry of a final Pre-Trial Order.

7. Produce all minutes of all meetings of members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors of the corporation.

RESPONSE:

Objection. The request is unlimited in temporal scope and is therefore overbroad. Subject to and without waiving the foregoing objection, Defendant produces responsive minutes and records it has been able to locate.

8. Produce all accounting records, annual financial statements, and financial audits of the Defendant for the last five years.

RESPONSE:

Objection. The term “accounting records” is undefined and is susceptible to more than one interpretation. Further, the request seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, Defendant produces its tax returns for the years 2018 and 2019. Defendant will locate its 2020 return and supplement with its production. If Plaintiff wishes to review other potentially responsive records, counsel for Defendant will confer with counsel for Plaintiff and discuss whether, and on what terms, Defendant will make such documents available for inspection and copying.

9. Produce all receipts, contracts, invoices, bank statements, or other documents showing maintenance for the Parking Lot tract and Lot 1 Rev. as defined in the Complaint for the last five years.

RESPONSE:

Bank statements are produced herewith.

10. Produce current articles of incorporation of Defendant.

RESPONSE:

Responsive documents are enclosed.

11. Produce current bylaws of Defendant.

RESPONSE:

Responsive documents are enclosed.

12. Produce all written assignments from Olde Point Development, Inc., Olde Point Associates Limited Partnership, Hanley Corporation, Olde Point Property Owner's Association, or any other entity who was or purported to be an Owner, Developer, or their successor, to Harbor Village Yacht Club.

RESPONSE:

Objection. "Assignments" is undefined and susceptible to more than one interpretation. Assuming assignments would include the conveyance from Hanley Corporation to Defendant pursuant to which Defendant succeeded to the rights of Hanley Corporation in the deeded property, a copy of the deed is enclosed herewith.

13. Produce all written contracts or agreements from Olde Point Development, Inc., Olde Point Associates Limited Partnership, Hanley Corporation, Olde Point Property Owner's Association, or any other entity who was or purported to be an Owner, Developer, or their successor, to Harbor Village Yacht Club.

RESPONSE:

Defendant has been unable to locate any responsive documents.

14. Produce all correspondence and communications from former counsel of Plaintiff authorized to act on behalf of Plaintiff regarding any issues raised in the pleadings in this matter.

RESPONSE:

Responsive documents are enclosed herewith.

This the 12<sup>th</sup> day of July, 2022.

MURCHISON, TAYLOR & GIBSON, PLLC

By: Andrew K. McVey

Andrew K. McVey

State Bar # 20217

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Wilmington, NC 28403

(910) 763-2426

[Amcvey@murchisontaylor.com](mailto:Amcvey@murchisontaylor.com)

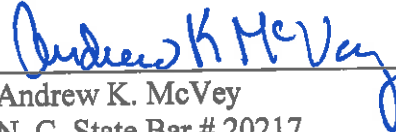
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents was this day served upon the below named counsel of record, postage prepaid, and emailing at the addresses shown below:

Bradley A. Coxe  
HODGES COXE & POTTER, LLP  
3907-100 Wrightsville Avenue  
Wilmington, NC 28403  
*Counsel for Plaintiff*

This the 12<sup>th</sup> day of July, 2022.

MURCHISON, TAYLOR & GIBSON, PLLC



Andrew K. McVey  
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1979 Eastwood Road, Suite 101  
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