

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

CIVIL DIVISION
DOCKET NO. 333-4-15 Cnev

Brianne E. Chase, Trustee of the Revocable Living)
Trust of Barbara S. Eastman,)
)
Plaintiff)
)
v.)
)
Town of Underhill,)
)
Defendant)

**PLAINTIFF’S RESPONSES TO DEFENDANT’S FIRST SET OF DISCOVERY
REQUESTS**

NOW COMES Plaintiff, Eastman Trust, by and through its attorneys, Clarke Demas & Baker, and hereby respond to Defendant’s Interrogatories and Requests to Produce.

INTERROGATORIES

Interrogatory No. 1

Please identify each individual responding to these discovery requests and state the authority under which he/she is responding on behalf of Plaintiff.

RESPONSE: Brianne Chase, Successor Trustee of the Eastman Trust

Interrogatory No. 2

Please identify each person who assisted the above named individuals in providing responses to these interrogatories and requests for production of documents.

RESPONSE: None

Interrogatory No. 3

- A. Identify any and all communications between the Town and the Plaintiff regarding Plaintiff's proposed use of the Repa Trail to access the Property.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: See Exhibits to Plaintiff's Complaint for Declaratory Judgment, # 7, 8, and 9. The requests documented in those Exhibits were also discussed at selectboard meetings, the minutes of which are in Defendant's custody.

Interrogatory No. 4

A. In paragraph 4 of the Complaint, you allege that the Town of Westford discontinued Goodrich Road.

i. When did Westford stop maintaining Goodrich Road?

ii. When did Westford discontinue Goodrich Road? When did Westford reclassify portions of Goodrich Road?

B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Upon information and belief, Goodrich Road was reclassified by the Town of Westford in 1972 to be a trail, and a portion of it was discontinued. In June, 2000,

Goodrich Road was again reclassified. See Exhibit 7 to Plaintiff's complaint for documents memorializing this response.

Interrogatory No. 5

- A. In paragraph 8 of the Complaint, you allege that as of 2000, Goodrich Road had been closed for 25 years. Please explain what you mean by "closed."
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Goodrich Road was reclassified by the Town of Westford in 1972 as a Trail, and part of it was discontinued. It was no longer maintained by the Town as a passable road. Abutting landowners installed gates. See Exhibit 7 to Plaintiff's complaint for documents memorializing this response.

a. Interrogatory No. 6

- A. Did Plaintiff, or its predecessors in title, ever use Goodrich Road to access the Property? If so, please describe all such use including the year, the means of access (by foot, by car), and the purpose of said access.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Goodrich Road had been reclassified and partially discontinued by the Town of Westford when the Trust purchased the land in 1993. As the maps attached as exhibits 4 and 5 to the Complaint show, Goodrich Road (and Repa Road) were historically used for access to homesteads by residents, which would include predecessors in title to the Trust Property.

Interrogatory No. 7

In paragraph 9, you allege that Goodrich Road was discontinued on July 28, 2000. Do you contend the 2000 discontinuance of Goodrich Road complied with 19 V.S.A. § 790?

RESPONSE: This question requires a legal analysis, which the undersigned is not able to provide.

Interrogatory No. 8

Identify each person whom you expect to call as an expert witness at trial in this matter and state the subject matter upon which each such expert is expected to testify, and state the substance of the facts and opinions as to which each such expert is expected to testify.

None identified at this time, but we will supplement these responses as necessary.

Interrogatory No. 9

Identify all persons with knowledge of the facts and allegations set forth in the Complaint.

RESPONSE: Objection, the question is vague and overly burdensome. Notwithstanding, persons with knowledge of the facts set out in the Complaint, relating to the use of the road include all past and present residents along Repa Road and Goodrich Road, David Crane, and Plaintiff. Persons with knowledge of the facts regarding Plaintiff's claim for violation of constitutional rights include the Underhill selectboard, and all persons present at the hearings on this issue.

Interrogatory No. 10

Did Plaintiff make use of Repa Road or Repa Trail to access the Property at any time in 2000 prior to August 2, 2000? If so please provide the date of such access, describe the purpose of the access, and the type of vehicle used. Please provide the same information for the preceding ten years.

RESPONSE: Plaintiff routinely used Repa Road and/or Repa Trail to access the land for all purposes, including recreational purposes, from 1993 to the present.

Interrogatory No. 11

- A. Has Plaintiff submitted an application to the Town of Westford to subdivide the Property?
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: No

Interrogatory No. 12

- A. Has Plaintiff discussed with the Town of Westford, or any adjoining landowner (to the Property) the possible use of Goodrich Road to access the Property?
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Plaintiff has been informed by a representative of the Town of Westford that a portion of Goodrich Trail may be improved to become more passable, but that the vast majority of that trail will remain unusable.

C. Interrogatory No. 13

Was Plaintiff aware of the litigation referenced in Paragraph 12 of the Complaint?

RESPONSE: At some point Plaintiff, though her counsel, became aware of the litigation in Paragraph 12 of the complaint.

Interrogatory No. 14

As the Stipulation referenced in Paragraph 12 of the Complaint provided the non-municipal parties with the right to use both the Goodrich Road and the Repa Trail to access their properties, please explain why Plaintiff contends its sole means of accessing the Property is the Repa Trail. Please explain why Plaintiff contends it cannot access the Property using the former Goodrich Road.

RESPONSE: Goodrich Trail is gated by adjoining landowners, and is not passable. See Affidavit of David Crane, Exhibit 6 to Plaintiff's complaint.

Interrogatory No. 15

- A. With respect to Paragraph 13 of the Complaint, please explain how Plaintiff's access to the Property has been challenged by neighbors, including when the challenge was made, who made the challenge, and the nature of the challenge.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: The late Trustee, Rolfe Eastman, was challenged by the neighbor living at the terminus of Repa Road.

Interrogatory No. 16

- A. With respect to Paragraph 14 of the Complaint, does Plaintiff contend that access to the Property was not simultaneously possible by way of Goodrich Road at all times that the farmstead referenced therein (the “Farmstead”) was inhabited?
- B. Identify any and all documents which memorialize your contention.

RESPONSE: Plaintiff relies on the maps attached to the complaint, which show that Repa Road and Goodrich Road provided access to the Property from either town during the past century.

Interrogatory No. 17

- A. With respect to Paragraphs 14-16 of the Complaint, please provide a detailed description of the alleged historical use made of Repa Road or Repa Trail by Plaintiff’s predecessors in title. With respect to the Farmstead, when was the Farmstead last inhabited?
- B. Identify any and all documents which memorialize your response to subparagraph (A) above, including any maps or documents that do not show the Farmstead.

RESPONSE: The maps attached to the complaint show homesteads accessible by Repa Road and Goodrich Trail. The Farmstead was inhabited for 100 years or more, according to maps and the historical artifacts evident on the property. The farmstead was abandoned before Plaintiff took title in 1993.

Interrogatory No. 18

Please identify all persons with knowledge of the history of the Farmstead's occupation and use, and the prior use made of Goodrich and Repa roads to access the Farmstead and/or the Property.

RESPONSE: The question is overly broad and burdensome. Plaintiff cannot identify "all persons with knowledge of the history of the Farmstead's occupation and use".

Interrogatory No. 19

With respect to the "written requests" referenced in Paragraph 17 of the Complaint, did you ever submit an Access Permit Application? If so, please provide a copy.

RESPONSE: See Exhibits 8 and 9 to Plaintiff's Complaint.

Interrogatory No. 20

A. With respect to the alleged "numerous intermediate requests" described in paragraph 18 of the Complaint, please identify the date and form of each such alleged request.

B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: See Exhibits 7, 8 and 9 to Plaintiff's request, as well as minutes of the selectboard hearings from the Town of Underhill.

Interrogatory No. 21

A. With respect to the allegation in paragraph 19 of the Complaint that the Town made the issuance of a "License" contingent upon Plaintiff providing certain documents,

was this contingency expressed verbally or in writing? Regardless as to how this alleged contingency was conveyed to Plaintiff, please provide the date and form of each such conveyance (verbal, letter, email, etc.).

- B. Describe with particularity the words used to express this alleged contingency, including the date and the speaker or writer.
- C. Identify any and all documents which memorialize your response to subparagraphs (A) and (B) above.

RESPONSE: The Town selectboard member repeatedly requested to see a copy of the Eastman Trust, which document is not a public record. See town meeting minutes for the date of such request.

Interrogatory No. 22

- A. With respect to the allegation in paragraph 19 of the Complaint that the Town challenged Plaintiff to show why, as a non-resident, Plaintiff was entitled to the same right to use Town roads as an Underhill resident, was this challenge expressed verbally or in writing? Regardless as to how this alleged challenge was conveyed to Plaintiff, please provide the date and form of the alleged challenge (verbal, letter, email, etc.).
- B. Describe with particularity the words used to express this alleged contingency, including the date and the speaker or writer.
- C. Identify any and all documents which memorialize your response to subparagraphs (A) and (B) above.

RESPONSE: The selectboard member verbally stated at the meeting that the Town of Underhill did not need to provide access to property located in a town other than Underhill. See selectboard minutes for dates of meetings.

Interrogatory No. 23

- A. With respect to the allegation in paragraph 21 of the Complaint that Plaintiff's sole mean of accessing the Property since 1972 has been by way of Repa Road and Repa Trail, please provide a detailed description of each such access since 1972 including the year, month, means of access, person or persons effecting such access, and purpose of the access.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: The question is overly broad and burdensome. Plaintiff does not keep a record of every time a family member traveled to or from the property, over a 43 year period, 21 years of which predated the Trust's ownership.

Interrogatory No. 24

- A. With respect to the allegation in paragraph 21 of the Complaint that Plaintiff's sole mean of accessing the Property since 1972 has been by way of Repa Road and Repa Trail, please explain why such access is not possible over Goodrich Road under the same legal theories that Plaintiff alleges it has a right of way over the discontinued portion of Repa Road and the Repa Trail.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Plaintiff has offered no opinion as to the legal status of Goodrich Trail access, but has stated that Goodrich Trail is physically impassible.

Interrogatory No. 25

- A. With respect to the allegation in Count III of the Complaint that Selectboard members described Plaintiff's request as unsympathetic, please identify each Selectboard person that allegedly so described the request, the actual description made of the request, and the date of the hearing at which the alleged statement was made, or if not made at a hearing, when and by whom the statement was made to Plaintiff.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: See 21 and 22 above.

Interrogatory No. 26

- A. With respect to the allegation in Count III of the Complaint that Plaintiff has been denied access to the Property by the Town, please explain how and when Plaintiff was denied access and describe with particularity each request for access and each alleged denial.
- B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Plaintiff's request for a license has not been granted, nor acknowledged.

Interrogatory No. 27

A. With respect to the allegation in Count III of the Complaint that Selectboard members have stated at a public hearing that “because Plaintiff not a resident of Underhill,” Plaintiff is “not necessarily entitled to access over Underhill public highways”, please identify each Selectboard member who allegedly made such statement, the actual statement made, and the date or dates of the hearing(s) at which the alleged statement was made, or if not made at a hearing, when and by whom the statement was made to Plaintiff.

B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: See No. 22 above.

Interrogatory No. 28

A. With respect to the allegation in Count III of the Complaint that “Plaintiff has been the recipient of a consistent pattern of discriminatory conduct . . . due to its status as a owner of land in a different Vermont town,” please identify each instance of such allegedly discriminatory conduct and describe with particularity the form and content of the alleged conduct, including the date, the person or persons allegedly engaged in such conduct.

B. Identify any and all documents which memorialize your response to subparagraph (A) above.

RESPONSE: Plaintiff’s request for a license has not been granted, and no reason for its denial has been given.

Interrogatory No. 29

A. With respect to the allegation in Count III of the Complaint that Plaintiff's request for a "license" has been repeatedly rebuffed, please explain what Plaintiff means by use of the term "license."

B. Describe with particularity each request for a "license" and each "rebuff" of such request.

C. Identify any and all documents which memorialize your response to subparagraphs (A) and (B) above.

RESPONSE: "License" is defined in 19 V.S.A. 1111. See Exhibits 8 and 9 to Plaintiff's complaint.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Vermont Rules of Civil Procedure, Defendant requests that Plaintiff produce the following documents for inspection and copying at the offices of Defendant's attorneys, Murphy Sullivan Kronk, 275 College Street, P.O. Box 4485, Burlington, Vermont 05406-4485, within thirty (30) days of the date hereof.

Request for Production No. 1

Please produce any and all documents reviewed or consulted in responding to the above Interrogatories.

Request for Production No. 2

Please produce any and all documents identified in response to the above Interrogatories.

Request for Production No. 3

Please produce any and all documents related to the discontinuance of Goodrich Road. Include any documents reflecting correspondence between Plaintiff and Westford related to the possible use of discontinued portion of Goodrich Road to access the Property.

Request for Production No. 4

Please produce any and all documents related to any proposed subdivision or future development of the Property.

Request for Production No. 5

Please produce all documents relating in any way to Plaintiff's, or its predecessors in title's, historical use of the Property.

Request for Production No. 6

Please produce any and all documents related to the discontinuance of the portion Repa Road that has been designated as a trail. Include any documents reflecting correspondence between Plaintiff and the Town related to the possible use of discontinued portion of Repa Road to access the Property.

RESPONSE: Documents relied on have been attached to Plaintiff's complaint and are already in Defendant's possession. Minutes of the selectboard meetings are in the possession and control of Defendant.

THE FOREGOING REQUESTS TO PRODUCE SHOULD BE DEEMED TO BE CONTINUING IN NATURE INsofar AS REQUESTED ITEMS MAY COME

**INTO THE POSSESSION OF PLAINTIFF AND/OR ITS ATTORNEYS BETWEEN
THE PRESENT TIME AND THE TIME OF TRIAL.**

Dated at Burlington, Vermont this 21st day of October, 2015.

Brianna Chase, Trustee of the
Revocable Living Trust of Barbara S.
Eastman.