

IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

HIGH GABLES HOMEOWNERS  
ASSOCIATION, INC.,

Plaintiff,

v.

LARRY C. OLDHAM,

Defendant.

Civil Action File No. 05-CV-2005

**DEFENDANT'S FIRST CONTINUING  
INTERROGATORIES TO PLAINTIFF**

COMES NOW Defendant Larry C. Oldham and serves his First Continuing Interrogatories upon High Gables Homeowners Association, Inc. ("you"). You are required to answer these Interrogatories in the fashion and within the time provided by O.C.G.A. §§ 9-11-26 and 9-11-33 and to serve your responses upon Defendant's counsel, Larry C. Oldham, at Oldham & Reece, LLP, 416 Pirkle Ferry Road, Suite K-500, Cumming, Georgia 30040, within the time period specified by law.

These Interrogatories shall be continuing in nature and if further or additional information bearing upon any Interrogatory or sub-part thereof comes to your knowledge at any time following service of your response, you are required to supplement said responses in accordance with O.C.G.A. § 9-11-26(e).

These Interrogatories are made subject to and are deemed to include and incorporate the following instructions and definitions.

## INSTRUCTIONS

1. Each Interrogatory is addressed to your personal knowledge, as well as to the knowledge or information of your attorneys, principals, accountants, officers, directors, investigators, agents, employees and other representatives.
2. As used herein, the term "identify" or a request to "state the identity of" means:
  - (a) When used in reference to a natural person it shall mean his or her full name, complete home and business addresses and telephone numbers, employer or business affiliations, and occupation and business position presently held;
  - (b) When used in reference to a corporation, limited liability company, partnership, or other business entity it shall mean the full name of the corporation, its business address and telephone number, and the individuals employed or affiliated with such corporation with whom you communicated;
  - (c) When used in reference to a document it shall mean the identity of the persons who prepared the documents, the sender, the recipients, if any, the title, if any, a description of the general nature of the subject matter covered by the document, the date of preparation, the locations of each copy and the identity of the present custodians, the date of the document, and if a privilege is claimed, the type of privilege claimed and the specific basis therefor.
3. The term "describe" or "description" shall mean to provide a narrative statement of the matter in question, identify all documents relating or referring thereto, give the identity of all persons having knowledge thereof, state the subject matter of each person's knowledge and the manner in

which that knowledge was obtained, and state what acts were done by each person who in any way participated in the matter in question.

4. If you cannot answer any Interrogatory or part thereof, you should answer to the extent possible and state the reason for your inability to provide a complete answer.

## DEFINITIONS

1. As used herein, the term "document" is used in its broadest sense and shall mean, in addition to its common meaning, the original and all copies of any writing, document or other tangible thing of every type and description, whether written, printed, typewritten, handwritten or mechanically produced or otherwise recorded, of whatever character and however produced or reproduced, whether an original, master, duplicate or copy, including, without limitation, the following items: correspondence; communications; memoranda; notes (whether stenographic, handwritten, or otherwise recorded); e-mail; newsletters; calendars; diaries and diary entries; appointment books; contracts; agreements; proposals; studies; summaries; reports; minutes; manuals; catalogs; publications; books; pamphlets; investment literature; prospectuses or subscription documents; photographs; films; microfilms; sound, tape or voice recordings; tapes; video recordings; transcriptions of conversations, interviews, meetings or conferences; pictures; drawings; plans; charts; maps; surveys; labels (including file labels); telecopies; photo or carbon copies; magnetic recordings (including computer data); computer generated or stored information; depositions; answers to interrogatories; pleadings; judgments; statistical or data compilations; tax returns; financial statements; accounting or other financial papers or bank records; invoices; receipts; checks; check stubs; confirmation slips; order tickets; purchase orders; accounts; deposit slips; ledgers; time-keeping records and expense account records.

2. The word "person" means an individual, partnership, corporation, division, firm, association, organization, business, or other entity.

3. As used herein, the word "Defendant" refers to Larry C. Oldham and all of his agents, principals, attorneys, officers, directors, servants, employees, consultants, representatives and any other persons or entities acting or purporting to act on their behalf or under their control.

4. As used herein, the word "Plaintiff" refers to High Gables Homeowners Association, Inc. and all of its agents, principals, attorneys, officers, directors, servants, employees, consultants, representatives and any other persons or entities acting or purporting to act on their behalf or under their control.

5. The phrases "relating to" and "relate to" shall be construed in their broadest sense and shall mean describing, setting forth, discussing, mentioning, commenting upon, supporting, contradicting, or referring to the subject or topic in question, whether in whole or in part.

6. The word "all" shall be deemed to include and encompass the words "each," "every," and "any."

7. With regard to the terms defined herein, all terms in the singular shall include the plural, and all terms used in the plural shall include the singular.

8. The conjunction "and/or" shall be interpreted in every instance both conjunctively and disjunctively.

9. The words "you" or "your" refer to High Gables Homeowners Association, Inc. and all of its agents, principals, partners, attorneys, servants, employees, consultants, representatives or any other persons or entities acting on their behalf.

10. The capitalized terms used herein shall have the meaning given to them in Defendant's Verified Answer, Counterclaim and Third Party Complaint unless otherwise defined herein. In addition, the following terms used herein shall have the definitions given to them as set forth below:

"ACC" means the Architectural Control Committee of Plaintiff as contemplated by the Declaration and all individual members thereof.

"Board" means Plaintiff's board of directors as same may have been constituted at any time-frame contemplated hereby.

"Building and Design Specifications" means that certain document entitled "Standard Building and Design Specifications for High Gables, Revised August 1, 2001, Phases Two and Three".

"Covenants" means those certain easements, covenants and restrictions contained in the Declaration.

"Declaration" means that certain Declaration of Covenants, Conditions, Restrictions and Easements for High Gables recorded at Deed Book 1538, Page 769, Forsyth County, Georgia records, as amended from time to time.

"Defendant's Alleged Covenant Violations" means each of the alleged violations of the Covenants set forth in Plaintiff's Complaint, namely Defendant's failure to install his (i) driveway; (ii) sidewalk; (iii) entrance landscaping; and (iv) mailbox.

"Governmental Authorities" means the governmental and regulatory authorities of Forsyth County, Georgia, including, without limitation, the engineering department, the sheriff's department, and its erosion and sedimentation control enforcement personnel.

"HOA Members" means the members of Plaintiff, as determined in accordance with the requirements and conditions of the Declaration.

"Management Company" means Heritage Property Management, or any predecessor management company that has performed services for Plaintiff.

"Neighborhood" means High Gables Subdivision, Phases One, Two and Three, all of which are located on Holtzclaw Road in Cumming, Forsyth County, Georgia.

"Officers and Directors" means the members of the Board in their capacities as officers and/or directors of Plaintiff.

"Oldham Property" means Lot 38 of High Gables - Phase Three, located at 4250 High Gables East, Cumming, Georgia 30041.

"Plaintiff's Counsel" means attorneys with Stites & Harbison, PLLC or Hawkins & Parnell, LLP, as the context requires.

## INTERROGATORIES

1.

Identify each person who has personal knowledge as to any facts or circumstances relevant to the issues involved in this Action, describing for each person generally the facts or circumstances about which such person has knowledge.

2.

Identify any other legal action in which you have been involved, including the style of the case, court and the civil action file number, the name of the attorney or firm that represented you, the date of

any depositions you may have given in such action, the outcome of the legal action, and the nature and subject matter of the legal action.

3.

Identify the Board for each fiscal year of Plaintiff starting with 2001.

4.

Identify the HOA Members and numbers of HOA Members who attended the annual meetings for each year starting in 2001 through the meeting in September of 2005, including any rolls, minutes or other record of such meetings.

5.

Other than the annual meetings of the HOA members in September of each year, identify any meetings of the HOA Members since 2001, specifying the approximate time, date and subject matter of each such meeting.

6.

Is the Board able to transact business on behalf of the HOA Members if a quorum was not present at the annual meetings of the HOA Members or adjournments of those meetings?

7.

Identify each investigation or inquiry you made regarding Defendant's Alleged Covenant Violations, whether with Defendant, another HOA Member, or otherwise, prior to filing the Action against Defendant.

8.

Was the decision to file the Action against Defendant made by the 2004-2005 Board or the 2005-2006 Board, or both such Boards?

9.

In connection with your decision to file the Action against Defendant, identify each person involved in the decision, the general content of the discussion at the time the decision was made, and the persons voting for and against the decision.

10.

Identify the conversations between Defendant or his wife and Officers and Directors regarding Defendant's Alleged Covenant Violations and whether all of the members of the Board were aware of the nature and content of those conversations at the time they voted to file the Action.

11.

Identify the content of any oral or written reports given by Bobby Lawson, David Marchat and Robert Clark to the Board, the Management Company, and/or Plaintiff's Counsel regarding their conversations with Defendant.

12.

Why did you determine it was appropriate to attempt to impose fines against Defendant? If you contend those fines continue to accrue, on what grounds do you base that determination?

13.

How many times has the Board met with Defendant about Defendant's Alleged Covenant Violations?



14.

Identify each member of the Board who has physically visited or inspected the Oldham Property, including the extent of such physical visit or inspection, the approximate date and time of said visit, and whether Defendant or his family members were present at the time of the visit or inspection.

15.

Identify whether you considered taking actions less costly and drastic than filing the Action against Defendant, what alternatives you considered, and your basis for concluding that such actions would not be effective.

16.

Why did the Board and Plaintiff's Counsel file the Action without first contacting Defendant to discuss the issues?

17.

Why did Plaintiff's Counsel elect not to extend Defendant the courtesy of acknowledging service?

18.

Before undertaking the Action, did you discuss with Plaintiff's Counsel an estimate of how much the Action would cost Plaintiff, and what was that estimate?

19.

Identify any petition, questionnaire, correspondence, conversations or other inquiries you circulated or undertook with the HOA Members before filing the Action against Defendant.

20.

Identify all grounds on which you contend Defendant is liable for your costs and attorney's fees, including, with particularity, all grounds for your contention that Defendant has (i) acted in bad faith; (ii) been stubbornly litigious; or (iii) caused you unnecessary trouble and expense.

21.

After careful review of the Covenants, identify with particularity each violation of the Covenants that exist in the Neighborhood and explain the Action that Plaintiff or the Board has taken to correct those violations or the basis on which Plaintiff and/or the Board refuse to correct such violations.

22.

Identify all portions of the Covenants upon which you rely for the filing of the Action against Defendant.

23.

When do the Covenants or the Building and Design Specifications provide that a homeowner is required to each portion of the Defendant's Alleged Covenant Violations.

24.

Do you have specifications for the "neighborhood standard" mailbox specified in the Building and Design Specifications and are you required to provide a homeowner with those specifications upon request?

25.

Identify with particularity any remaining issues pertaining to Defendant's Alleged Covenant Violations, including any issues you have with Defendant's entrance landscaping.

26.

Identify all Covenants that you have enforced through fines and/or legal action during the past four years and explain how any alleged violation of the Covenants was resolved.

27.

Identify all of the HOA Members who voted in favor of the June 23, 2003 Amendment to the Declaration recorded at Deed Book 2876, Page 548, Forsyth County, Georgia records and specify whether such person voted in person or by proxy. Also identify the approximate date and time of the meeting where such vote took place.

28.

Identify how much you have collected in fines as a result of alleged violations of the Covenants since the June 23 Amendment was recorded in the real property records of Forsyth County, Georgia.

29.

Explain the relationship between the fines you have attempted to impose against Defendant and the harm you and the HOA Members suffered as a result of Defendant's use of a gravel driveway on a temporary basis?

30.

Do you believe that a fine of \$25.00 per day (or \$9,125.00 per year) provides you with an adequate remedy at law for any alleged harm you claim to suffer as a result of Defendant's Alleged Covenant Violations, and if not, why?

31.

Did you believe that Defendant ever intended not to complete the work underlying Defendant's Alleged Covenant Violations, and if so, please explain the basis for that belief?

32.

Do you think the home, landscaping and other improvements constructed on the Oldham Property prior to the completion of the work underlying Defendant's alleged Covenant Violations devalued the other homes in the Neighborhood and if so, explain the basis for that contention?

33.

Identify all conversations and correspondence you have had with Governmental Officials concerning Defendant's Alleged Covenant Violations, including the identities of the Board members who engaged in such conversations and correspondence, the general nature of such conversations or correspondence, and the outcome of same.

34.

Identify the author of the anonymous letter sent to Defendant in the second week of July which is attached to Defendant's Answer, Counterclaim and Third Party Complaint as Exhibit A.

35.

Identify any conversation or correspondence between any Officer or Director and any HOA Member regarding Defendant's Alleged Covenant Violations.

36.

Identify all HOA Members who complained, whether verbally or in writing, to the Board or the Officers and Directors regarding Defendant's Alleged Covenant Violations.

37.

Identify the HOA Member(s) that contacted local law enforcement on November 7, 2005 concerning the noise coming from a generator located next to the Oldham Property when Defendant's concrete contractors were finishing Defendant's driveway and sidewalk.

38.

Identify all communications the Board had with HOA Members, the Management Company, or any other person regarding Defendant's Alleged Covenant Violations, and whether those communications included statements that Defendant was an attorney.

39.

Explain all facts and circumstances which support your claims in your October 19, 2005 letter to the HOA Members that Plaintiff "...tried diligently to find resolution with [Defendant] through conversations and written letters without remedy...", that Plaintiff "...gave [Defendant] every opportunity to bring his home in compliance..."; and that "[d]espite his verbal promises to do so, no work has been done [by Defendant]...."

40.

Identify all documents upon which you relied in preparing your Verified Complaint for Money Damages and Injunctive Relief or your responses to these Interrogatories, and all documents which relate, whether directly or indirectly, to the issues in this Action. For each document you identify, you should indicate the Interrogatory (or Interrogatories) to which it applies.

41.

Identify each person supplying any information used in formulating any response to these Interrogatories, indicating by each such person's name the number of each Interrogatory for which that person supplied information.

42.

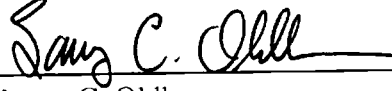
Identify all persons whom you intend to call as expert witnesses in the above-styled Action, stating for each such person the subject matter on which he or she is expected to testify, all of the facts and grounds upon which such person's opinions are based, and whether such person has furnished you with a written or recorded statement or report.

43.

If any privilege or immunity is claimed with respect to any document otherwise responsive to Defendant's First Request For Production of Documents served concurrently herewith, identify each document by the type of document (letter, memorandum, telephone note, etc.), its date, its authors, any addresses listed on the document, the present location of document and its present custodians, the number of pages of document, a description of the document or its contents sufficient to determine upon what basis the asserted privilege is claimed, persons other than the addressee or named recipient receiving copies of the document and the relationship of these persons to the parties in this suit; and the specific nature of the privileges or immunity asserted.

These Interrogatories are submitted to Plaintiff as of February 25, 2006.

OLDHAM & REECE, LLP

A handwritten signature in black ink, appearing to read "Larry C. Oldham", is written over a horizontal line.

Larry C. Oldham

Georgia State Bar No. 551455

Attorneys for Defendant

416 Pirkle Ferry Road  
Suite K-500  
Cumming, Georgia 30040  
(770) 889-8557 (phone)

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Defendant.

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**CERTIFICATE OF SERVICE**

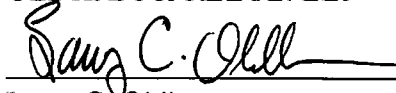
I hereby certify that I have delivered a true and correct copy of the within and foregoing **Defendant's First Continuing Interrogatories to Plaintiff** to opposing counsel of record by depositing same in the United States Mail with adequate postage thereon and addressed as follows:

P. Jay Pontrelli, Esq.  
Stites & Harbison, PLLC  
303 Peachtree Street, N.E.  
2800 SunTrust Plaza  
Atlanta, Georgia 30339

Peter R. York, Esq.  
Hawkins & Parnell, LLP  
4000 SunTrust Plaza  
303 Peachtree Street, N.E.  
Atlanta, Georgia 30308

So certified as of February 25, 2006.

OLDHAM & REECE, LLP



Larry C. Oldham  
Georgia State Bar No. 551455  
Attorneys for Defendant

416 Pirkle Ferry Road  
Suite K-500  
Cumming, Georgia 30040  
(770) 889-8557 (phone)



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**RULE 5.2 CERTIFICATE**

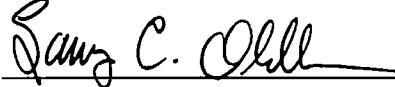
In accordance with Uniform Superior Court Rule 5.2, I hereby certify that on February 25, 2006 I have served **Defendant's First Continuing Interrogatories to Plaintiff** to opposing counsel of record by depositing same in the United States Mail with adequate postage thereon and addressed as follows:

P. Jay Pontrelli, Esq.  
Stites & Harbison, PLLC  
303 Peachtree Street, N.E.  
2800 SunTrust Plaza  
Atlanta, Georgia 30339

Peter R. York, Esq.  
Hawkins & Parnell, LLP  
4000 SunTrust Plaza  
303 Peachtree Street, N.E.  
Atlanta, Georgia 30308

So certified as of February 25, 2006.

OLDHAM & REECE, LLP



Larry C. Oldham  
Georgia State Bar No. 551455  
Attorneys for

416 Pirkle Ferry Road  
Suite K-500  
Cumming, Georgia 30040  
(770) 889-8557 (phone)