

PAUL JOHN CISAR, et al. * IN THE
Plaintiffs, * CIRCUIT COURT
v. * FOR
F.O. MITCHELL & BRO, et al. * ANNE ARUNDEL COUNTY
Defendants. *
* CASE NO.: C-02-CV-22-000988

* * * * *
DEFENDANT F.O. MITCHELL & BRO.'S
RESPONSES TO THE FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO PLAINTIFF 3P PROTECT PERRYMAN PENINSULA

Defendant F.O. Mitchell & Bro., through its undersigned attorneys and pursuant to MD. RULE 2-422(c) hereby Responds to the Request for Production of Documents propounded by Plaintiff 3P Protect Perryman Peninsula (“Plaintiff”) in the above-captioned matter as follows:

GENERAL OBJECTIONS

1. Each and every request is responded to subject to the General Objections set forth below. These objections and limitations form a part of the response to each and every request and are set forth here to avoid the duplication and repetition of restating them for each response. These general objections may be specifically referred to in response to certain requests for the purpose of clarity. The failure to specifically incorporate an objection, however, should not be construed as a waiver of the General Objections.

2. Defendant F.O. Mitchell & Bro. objects to each Request to the extent it seeks information and/or documents subject to the attorney-client privilege, attorney work-product or any other legally applicable privilege.

3. Defendant F.O. Mitchell & Bro. objects to each request to the extent it purports to exceed the discovery permitted by the Maryland Rules.

4. Defendant F.O. Mitchell & Bro. objects to each request to the extent it seeks disclosure of information not reasonable calculated to lead to the discovery of

admissible evidence.

5. Defendant F.O. Mitchell & Bro. objects to each request to the extent it seeks information and/or documents that are not in Defendant F.O. Mitchell & Bro.'s possession, custody or control.

6. Defendant F.O. Mitchell & Bro. objects to each request to the extent that it seeks discovery that is unreasonably cumulative or duplicative, is obtainable from some other source that is more convenient, less burdensome or less expensive.

7. Defendant F.O. Mitchell & Bro. objects to each request to the extent that it is vague, ambiguous, overbroad, unduly burdensome or oppressive.

8. Defendant F.O. Mitchell & Bro. has not yet completed discovery of the facts in this lawsuit nor fully prepared for trial and, therefore, reserves the right to supplement any of the foregoing Responses in a manner consistent with the Maryland Rules and any Scheduling Order then in force.

9. Defendant F.O. Mitchell & Bro. further reserves the right to supplement the foregoing Responses, and accompanying document production, upon agreement between counsel on protocol for the production of electronically stored information ("ESI") and, if necessary, a duly-executed Protection Order.

RESPONSES:

REQUEST NO. 1: All documents relating to the Mitchell Property Development.

RESPONSE NO. 1: F.O. Mitchell & Bro. objects to this Request because Plaintiff seeks to avail itself of discovery based on a lawsuit that is improperly before this Court. Indeed, Plaintiff's lawsuit seeks an advisory opinion regarding development plans (i.e. final plan approval) which have not yet been approved by Harford County. There is no justiciable controversy, and Plaintiff has failed to exhaust its administrative remedies,

which, if aggrieved, would include filing a petition for judicial review in the Circuit Court for Harford County after the relevant development plan is approved. Harford County Subdivision Regulations, § 268-28(A). On judicial review, the Circuit Court for Harford County would review the administrative appeal on the record, which procedure explicitly prohibits discovery. Md. Rule 7-208; *Venter v. Bd. of Educ.*, 185 Md. App. 648, 349 (2009) (Rule authorizing the issuance of a scheduling order for civil actions filed in circuit court does not provide a right to discovery when the circuit court is reviewing the decision of an administrative agency). Furthermore, Plaintiffs have inappropriately pleaded an anticipatory private and public nuisance. Such claims are not recognized in Maryland. *Leatherbury v. Gaylord Fuel Corp.*, 276 Md. 367 (1975).

REQUEST NO. 2: All communications between you and any other Defendant relating to the Mitchell Property Development and/or the Site.

RESPONSE NO. 2: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 3: All communications between you and anyone other than another Defendant relating to the Mitchell Property Development and/or the Site.

RESPONSE NO. 3: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 4: All communications to, from, or by any abutters or area residents of the Site concerning the Mitchell Property Development or the Site.

RESPONSE NO. 4: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 5: All communications relating to the preparation, publication, submission or filing of the Site plans comprising the Mitchell Property Development, including but not limited to the following: zoning, septic, wastewater, wetlands, rivers, streams, stormwater, drainage, drinking water, groundwater and wells, including the Perryman wellfield, endangered and protected species, soil,, Site access, ingress and egress, noise, traffic, vibration, air quality, dust and particulate matter, lighting, historical, archeological, or environmental aspects,, and potential impacts on the health, safety, and wellbeing of the Perryman Peninsula residential community.

RESPONSE NO. 5: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 6: All investigations, research, studies and reports relating to the following aspects of the Mitchell Property Development and the Site: zoning, septic, wastewater, wetlands, rivers, streams, stormwater; drainage, drinking water, groundwater and wells, including the Perryman wellfield, endangered and protected species, soil,, Site access, ingress and egress, noise, traffic, vibration, air quality, dust and particulate matter, lighting, historical, archeological, or environmental aspects, and potential impacts on the health, safety, and wellbeing of the Perryman Peninsula residential community.

RESPONSE NO. 6: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 7: All communications with any member, agent, employee, officer, official or representative of the Harford County Council regarding or concerning the Mitchell Property Development and the Site.

RESPONSE NO. 7: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 8: All communications to or from the County Executive regarding or concerning the Mitchell Property Development and the Site.

RESPONSE NO. 8: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 9: All documents constituting or relating to traffic studies projecting the type, amount, routes, and daily flow of traffic that the Mitchell Property Development will generate (a) during development and construction and (b) upon completion.

RESPONSE NO. 9: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 10: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not create hazardous traffic conditions for the Plaintiffs and other residents of the Perryman Peninsula.

RESPONSE NO. 10: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 11: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not affect the air quality for the Plaintiffs and other residents of the Perryman Peninsula.

RESPONSE NO. 11: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 12: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not affect the water quality and supply for the Plaintiffs and other residents of the Perryman Peninsula.

RESPONSE NO. 12: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 13: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not increase the amount of noise in the area for the Plaintiffs and other residents of Perryman Peninsula.

RESPONSE NO. 13: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 14: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not endanger the Plaintiffs school aged children and the children of other residents of the Perryman Peninsula as they travel to and from school.

RESPONSE NO. 14: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 15: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not endanger the Plaintiffs and other residents of the Perryman Peninsula when they are walking or jogging along the roadway used for ingress and egress to the Site.

RESPONSE NO. 15: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 16: All documents, including communications, on which you rely to contend that the Mitchell Property Development will not adversely affect the quality of life that the Plaintiffs and other residents of the Perryman Peninsula currently enjoy.

RESPONSE NO. 16: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 17: All documents, including communications, on which you rely to contend that the property values of the Plaintiffs and other residents of the Perryman Peninsula will not be negatively impacted by the Mitchell Property Development.

RESPONSE NO. 17: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 18: All documents, including communications, on which you rely to contend that the property values of the Plaintiffs and other residents of the Perryman Peninsula have not already been negatively impacted by the submission of the Mitchell Property Development for the County's review and approval.

RESPONSE NO. 18: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 19: All documents, including communications, that support your contention that the Mitchell Property Development's proposed use is in accordance with the Harford County Zoning Code and meets the definition of "light manufacturing, warehousing and service uses" as defined in the Harford County Code.

RESPONSE NO. 19: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 20: All documents, including communications, that support your contention that the Mitchell Property Development should not be considered for zoning and use purposes as a Freight Terminal.

RESPONSE NO. 20: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 21: All documents, including communications, that support your contention that the Mitchell Property Development does not constitute a public nuisance.

RESPONSE NO. 21: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 22: All documents, including communications, that support your contention that the Mitchell Property Development does not constitute a private nuisance.

RESPONSE NO. 22: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 23: All reports and the supporting documents of any expert on whom you are relying in submitting and/or reviewing the Mitchell Property Development.

RESPONSE NO. 23: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 24: All reports and the supporting documents of experts on whom you will rely at trial.

RESPONSE NO. 24: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 25: All documents electronically stored and tangible things that support any position you have taken or intend to take in submitting and reviewing the Mitchell Property Development.

RESPONSE NO. 25: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

REQUEST NO. 26: All documents constituting or relating to any insurance policies under which all or part of a judgment entered in this action might be paid or a Defendants might be indemnified as a result of this action.

RESPONSE NO. 26: Defendant F.O. Mitchell & Bro. incorporates its response to Request No. 1.

Respectfully submitted,

/s/

Robert S. Lynch, Esquire
AIS# 8212010279

/s/

David S. Lynch, Esquire
AIS# 08121708228
Stark and Keenan, P.A.
30 Office Street
Bel Air, Maryland 21014
(410) 879-2222
rlynch@starkandkeen.com
dlynch@starkandkeen.com
Attorneys for Defendant Mitchell