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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell & Valery A. O'Connell)	
& on behalf of themselves as members of)	
Glastonbury Landowners Association.)	Cause No. DV-11-114
)	
Plaintiff(s),)	
)	
v.)	NEW AMENDED COMPLAINT
)	& MOTION FOR PLEADING
Glastonbury Landowners Association, Inc.)	
& current GLA Board of Directors)	
)	
Defendant(s))	
_____)	

COME now Plaintiffs & GLA members-Daniel and Valery O'Connell, and pursuant to the Oct. 23, 2012 MT. Supreme Court Order (DA 12-0157 cited below), do hereby submit this "New Amended Complaint & Motion ..." to allow this amended complaint barring this District Court's overdue Order as follows:

The MT. Supreme Court's Oct. 23rd Orders (page 5) specifically stated, "On remand, we instruct the District Court to order the O'Connells [Plaintiffs] to amend their complaint... and refile with the District Court..."

A full four month have passed without any word from this District Court. This Court's subsequent lack of Orders is causing spoilage of this complaint and evidence, thus warranting this motion to allow attached amended complaint without such Orders.

Note: Complaint claims for relief are evidenced within hundreds of exhibits, emails sent between the GLA Board and O'Connell, as attached to the original complaint filed June 22, 2011. **Thus,**

all Complaint/TRO Exhibits and affidavits since June 2011 are hereby included for this 2nd amended complaint as if fully set forth and attached hereto.

This complaint is brought pursuant to Title 27 and Title 35, Ch. 2 et seq., MCA based upon the facts and claims herein and exhibits and any further evidence that may be adduced in a hearing held hereon as requested. Plaintiff(s) aver as follows:

FACTUAL ARGUMENTS AND BRIEF

1. Since before this complaint was first filed in 2011, O'Connells have been members of the GLA (Glastonbury Landowners Association-non-profit corporation). All O'Connells pleadings and recorded meetings show they try to resolve all issues with the GLA Board Defendants before a last resort of legal action.
2. Which litigation is necessary to protect GLA members private property rights and their personal investments bought with personal sacrifices.
3. Complaint (email exhibits E.-I. and L.-Q.) are evidence for the GLA's breach of governing contracts and breach of duty per GLA Art. VIII. that have continued their breach of duties and governing contracts 2 years later. Seeing that nothing could be resolved, Mr. O'Connell filed this lawsuit that requests derivative proceedings, Directors removal for breach of duties, and/or injunction/TRO to restrain further GLA Director violations of its GLA governing laws.

(Note: In 2011 in reaction to this lawsuit, the Board invoked Roberts Rules of Order to essentially gage Mr. O'Connell at Board meetings, censor his agenda requests, and solicited a petition for his removal from the Board. Some GLA Board Defendants circulated a petition among 22 of their Board friends to remove Mr. O'Connell from the GLA Board. A special meeting was held Aug. 17, 2011, half the votes were proxy ballots many cast by the Board, not members, and without required quorum of 25% of all GLA members (40+ members out of 350 members were present). These caused illegal removal of Mr. O'Connell, who, elected by the members, can only be removed by the members.)

The GLA Board continued to violate many of the same and new GLA Bylaws, and Covenants, such as refusal to aggregately spend member assessments for snowplowing and

grading GLA roads (contrary to Covenant 8.01(h)), and continued paying Directors Mrs. Allen and Mr. Spallone for Board duties (contrary to Bylaw VIII.K.).

4. After this complaint was filed, three more lawsuits were filed against the GLA Defendants.

5. This was for GLA Board Defendants continued and un-remitted violations of its governing documents/contracts. Violations were first evidenced & witnessed (authenticated per M.R.Evid. 901) by Mr. O'Connell while he served as a Board Director from Nov. 2009 until Aug. 2011 (authority for injunction claim; *Butler v. Germann* (1991)). Complaint claims of Director violations & breach of duty to its governing bylaws and articles of incorporation are supported by GLA governing documents or contracts (*Two Crow*, 149 Mont. at 23, 494 P.2d at 919.)

6. All GLA Board Directors are given binder notebooks and told to read and be responsible for it's contents including the GLA "Code of Ethics," "Board Meeting: Norms, Robert's Rules of Order, "Agenda," and four GLA legal documents titled the "Articles of Incorporation" (see Exhibit A), the "Bylaws of Glastonbury Landowners Association, Inc." (see Exhibit B), the "Restated Declaration of Covenants for the Community of Glastonbury" (see Exhibit C), and the "Glastonbury Land Use Master Plan" (see Exhibit D).

7. Since being on the Board, the Plaintiff(s) gathered evidence of numerous and frequent infractions and continuous violations by the Board Defendants of the same GLA governing documents (see Exhibits I, K, L, M, N, O, P, and Q which shows Plaintiffs made the GLA Board aware of their numerous, repetitive and frequent violations of its GLA governing documents).

8. Since this complaint filing 2 years ago in June 2011, these GLA Directors continue to breach their duties and obligations to members by their repetitive and frequent violations of its

GLA governing documents and other abuses of limited powers against members* give rise to claims for fraud/**breaches of fiduciary duties**. *H-D Irrigating, Inc. v. Kimble Properties, Inc.*, 2000 MT 212, ~ 25,301 Mont. 34, 8 P.3d 95.

* GLA Article IV(E) states that the GLA Board and Corporation are "to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws." These GLA Bylaws dictate that the Board and any contract, such as the Minnick contract, can not change nor limit the land use, rights, privileges, duties, and responsibilities of the GLA, including Bylaw Article VI (14) that states that the GLA Board has a duty to "**do any and all things necessary to carry into effect these bylaws and to implement the purposes and exercise the powers AS STATED in the Articles of Incorporation, Covenants, Bylaws, Rules, and any Land Use Master Plan adopted pursuant to the Covenants;**"

9. GLA Defendants 8 alleged violations have been updated and now include the following:

- *GLA violation of a settlement agreement with members (attached from case 193);
- *GLA frequently deny member due process/notice (required per Bylaw XI.C., pg.15 Exhibit C.);
- *GLA deny members receipts and expenditure statements as required per Bylaw VIII.F & H;
- *GLA misappropriation of GLA assessment funds (fiduciary/fraud) & liability (per Art. VIII. & Covenant 8.01(h) for overspending on High South Roads, **refusal** to utilize the GLA website to post member payments, notices, newsletters, etc.. (unnecessarily costing members approx. \$12,000 more per year in printing, mailing, labor costs instead);
- * GLA deny its members meeting minutes from all GLA "private meetings" "committee meetings" and most open Board meetings (see attached email written request); which meetings the GLA conduct in secret is in violation of Bylaw Art. VI (I)
- *GLA without authority declare GLA election ballots, proxies, certification, and vote tallies "confidential" and denied to members. GLA and MCA laws for non-profit corporations do NOT allow election process and results to be confidential nor secret to be denied to Members. Also GLA Board yet refuse to let members know who is authorized to cast proxy ballots and how many and who cast at elections- all such secret election practices of the GLA Board violate Montana law (MCA 35-2-535) & exceed GLA bylaw/covenant authority;
- * GLA Board refuse to require written bids before hiring contractors and even its own Board members- thus in violation of GLA Article VIII & Bylaw VIII.K.;
- *GLA abuse of its variance clause & project review violations for the Erickson project+;
- + GLA/Erickson contract throws out GLA Bylaws and Covenats for Erickson parcel #90 forbidding Ericksons to build residences on their property. This contract violates GLA Member interests that runs with their land. – Violation of Covenants/Masterplan/Bylaws that allows and can not forbid building on lot 90 into perpetuity.
- + The GLA allowed 6 variances and more than the maximum two residences on Erickson's unsubdivided single lot – Violation of Master Plan 1.1 & more
- + GLA Created Covenants that supersede the original covenants. By entering into this contract, GLA is acknowledging another more strict covenant besides the original. The GLA Board does not have the authority to create covenants or regulation which encumber land. Violation -

Covenants (Preamble), 2.01, various state laws. – This illegal practice and Erickson contract challenged by Writs or pending a new lawsuit.

- + Illegal Erickson Commercial restrictions not found in the Master Plan. In exchange for granting the Ericksons the illegal variances of all buildings being placed on a single parcel (lot 90) The Erickson agreed to give up the right to build residences on lot #90 nor build commercial development on lot #91 including a bed and breakfast or resort. Covenant 5.07 (i) states that any further restrictions on commercial development besides those listed this section are to be found in the Master Plan. The Master Plan only includes a general definition for what makes something commercial i.e., "activities for a fee", but includes nothing on the kinds of activities restricted. – This illegal practice and Erickson contract challenged by Writs or pending a new lawsuit.
- + Deny/violate membership interest on parcel 90 not allowing any homes to be built on this Ericksons 20 acre parcel. – This illegal practice and Erickson contract challenged by Writs or pending a new lawsuit.
- + Deny community review of Erickson project review that adjoin our common land owned by all members.

10. For these alleged GLA Defendant violations above, Plaintiffs claims for relief are warranted **For any/all Directors removal, for derivative proceedings**" (per 35-2-1301 MCA) to resolve GLA Director disputes/actions (Exhibit I, K, L, M, N, O, P, and Q), Declaratory Judgement" civil claim to determine GLA contract violations, and for **injunction** against the GLA:

- a. to restrain or "postpone all GLA Board duties and activities of GLA Board Defendants for their continued violations of governing documents and MCA laws, and which injunction will, b. prevent the Defendants from practicing further harm, or violations of members rights, causing further undue burdens and liability upon the Association."
- c. to 'restrain GLA committee actions conducted in secret with no minutes or notice' to members per Bylaw VI.(I.) (Exhibit J,O), d. to restrain 'GLAs' public & private meetings and/or votes conducted in secret without minutes or notice' to members per (Bylaw VI.(F) & (G)), (Exhibit O)", e. 'to restrain GLAs' misappropriation of funds; illegal compensation of volunteer Directors per Bylaw VI.(K)* and non-aggregate spending' (per Covenant 8.01h.**), f. to restrain GLAs' ultra vires actions" regarding "Erickson Project Review" and erroneous "Finding of Facts" without due process, g.

to restrain (proposed) Erickson/GLA contract in excess of five years without notice & without member approval'(Exhibit J)***

11. As cited above, GLA Defendants refusal to act within the scope of their mandatory Association duties and limited powers, as set forth above, impugns the rights of Petitioner(s), if any or all claims for relief cited herein are met. This complaint includes injunctive claims to restrain actions of the GLA Directors by challenging their actions & decisions that exceed their authority/powers as a matter of law review (of governing documents Bylaws & Articles in this case); see *Bridger Canyon Property Owners' Ass'n, Inc. v. Planning & Zoning Comm'n*, 270 Mont 160, 890 P.2d 1268 (1995).

12. The August 2011 TRO is also included herein (*Dist.Ct.Dkt. 33*) and supports many Complaint injunctive claims; (see TRO Affidavit at ¶ 14-18 (*illegal proxy ballots/quorum*); ¶ 31 (*Erickson project*); ¶ 32-40 (*for misappropriation of assessments*); ¶ 43-44 (*deny meeting/committee minutes*). Plus Montana law, as well as the law of other jurisdictions, specifically recognizes fiduciary breach of duty/fraud claims.+ See *E.G. Green v. McAllister*, 103 Wash. App. 452, 468 (2000)

(Note: + liability pursuant to GLA Article VIII; obligations and limited powers pursuant to Bylaws including Bylaw VI. B.(14) "Do any and all things necessary to carry into effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the Covenants;" & Bylaw II.A, "These Bylaws . . . are adopted pursuant to the nonprofit corporation **statutes of the State of Montana.**")

13. Evidence includes affidavits, hundreds of exhibits, emails sent between the GLA Board and Mr. O'Connell, and other GLA documents as clear and unambiguous support for over a dozen claims for relief to remove or restrain GLA corporate Directors willful violations of Articles, Bylaws, Covenants/Masterplan.

14. Since this suit was filed, two GLA Directors, Clare Parker Neil Kramer ended up resigned from the Board in 2011.

15. Members claims are serious but have good reason to ask for the rest of the Boards removal after this case cited numerous evidence of GLA Defendants' misappropriation of funds and more. The GLA has never admitted wrongdoing, but instead two years and four complaints later the GLA Board Officers continue to illegally withhold documents from members, including all meeting minutes, contracts, and withholding other documents including **receipts and expenditures** in violation of GLA Bylaw VIII.F & H. In fact attached Oct. 7th email request for receipts and expenditures was never met, instead a budget report was copied renamed receipts.

16. Also, two years later, the GLA Defendants continue to dump all blame onto Plaintiffs by saying they're "confused about the law" have "meritless" issues "designed to harass" or again claim were merely brought for "vindictive" or "retaliatory" purpose for Mr. O'Connells removal.* Instead, Justice is overdue for Defendants governing contract violations against its members. Some Defendants have a lot at stake to deny everything so as to defend their gravy train, since about half the current GLA Board financially benefits from its GLA position or GLA money directly or indirectly.(*To the contrary, this complaint against the GLA was filed 3 months BEFORE O'Connells illegal removal without quorum for being a whistleblower.)

17. For example, five GLA Defendant Board Directors get income directly or indirectly from the GLA & project reviews. Board Director Alyssa Allen is the active GLA project review manager, and was property manager for several GLA properties until she was hired and paid to manage the GLA with Minnick's help costing almost \$30,000 for both. GLA Board Director Rich Spallone, a building contractor, is paid by the GLA to maintain and snowplow GLA roads

in High South where he lives. At least since 2009, all High South roads or Spallone receive 40–75% of the entire GLA road budget as contrary to Covenant 8.01(h) requiring aggregate spending on all roads (case claim DV-11-114). Spallone usually contracts out to members, such as the Erickicsons to extend their road. Another GLA Board Director and surveyor Gerald Dubiel, also gets numerous jobs after being privy to future GLA project reviews. GLA Director William Smith a building engineer has gotten much work from such project reviews or jobs from the contractor –Atkins Construction which company grades GLA Roads. GLA Director Sean Halling reportedly works with Rich Spallone. A new GLA Board Director-Scott McBride is married to the president of Church Universal & Triumphant; which church owns 6 properties in the GLA and dozens of adjoining properties to the GLA.

18. Exhibits and affidavits show GLA snowplowing cost for 2011 approx. \$20,000 dollars spent total-approx \$4,000 spent for GLA roads North and lower South Glastonbury, but approx. \$16,000 was spent snowplowing about 30 homes just in High South. Of this approx. \$20,000, approx. \$15,000 over the approved 2011 budget of \$5,000 and not voted by the majority of the Board, nor was it “limited by and conditioned upon the Landowners’ individual and collective payment of and the aggregate amount of the annual community assessment” per Covenant 8.01(h); thus appears to violate and cause immediate and irreparable injury by denying the membership rights, conditions, restrictions, servitudes, limitations, reservations, etc. under this Covenant 8.01(h).

19. **Members’ legal claims (regarding Defendants Articles & Bylaw violations)** relies on the Mt. Supreme Court's decision in *Two Crow Ranch, Inc.* (1972), 159 Mont. 16, 494 P.2d 915, and a decision from the Washington state court of appeals, *East Lake Water Ass'n v. Rogers* (Wash.Ct.App. 1988), 761 P.2d 627. In *Two Crow Ranch*, the Supreme Court stated that it is well established precedent that "the bylaws of a corporation, together with the

articles of incorporation, the statute under which it was incorporated, and the member's application, constitute a contract between the member and the corporation." *Two Crow*, 149 Mont. at 23, 494 P.2d at 919. The Washington court ruled in *East Lake Water*, that "[w]here a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void."

20. Court rulings above support O'Connells injunction claims for relief against GLA Directors; to stop, remove and/or void GLA Directors and their policies & proceedings for illegal GLA/Erickson contracts & covenants, refusal to take minute or notice committee & Director meetings, misappropriation of member assessments (fiduciary/fraud claims) spent on Director duties and for non-aggregate spending in High South Glastonbury, and more.

21. **Claims for relief found in GLA Articles of Incorporation**

Reliefs for such claims of willful misconduct are found in 35-2-413 MCA Removal of Directors by Judicial Proceeding (Complaint at ¶ 46). GLA Article VIII. states it is pursuant to M.C.A. Sections 35-2-418, 35-2-435, or 35-2-436, Complaint at ¶ 46, 47) Amended Complaint claims GLA Defendants breach of duty or obligation holds them liable & monetarily responsible per. Article VIII (Exhibit A at p.3 & *Complaint at ¶46*, as follows:

"Members of the Board of Directors of the Corporation shall not be liable to the Corporation or to members of the Corporation for monetary damages for breach of a director's duties to the Corporation and its members, provided that this provision does not eliminate or limit the liability of a director: 1. For a breach of duty of loyalty to the Corporation or its members*; 2. For acts or omissions not in good faith* or that involve intentional misconduct or a knowing violation of law; 3. For a transaction from which a director derived an improper personal economic benefit; 4. Pursuant to M.C.A. Sections 35-2418, 35-2435, or 35-2436."

Note: *This GLA Article VIII supports O'Connells Complaint claims against Defendants for omissions not in good faith, breach of duty, breach of a fiduciary obligation to act with honesty and good faith in violation of such GLA Art. VIII, and GLA Bylaws (which are contracts). Such

claims are authorized also pursuant to M.C.A. Title 28 for contracts; *Local Union Nu. 400 v. Bosh*, 220 Mont 304, 312, 715 P.2d 36 (1986). **GLA Defendants as fiduciary, owed to Plaintiffs basic obligations of agency: loyalty and obedience**, *Frederick*, 208 Mont. at 118, *State v. Frederick*, 208 Mont. 1 12, 676 P.2d 213 (1984).)

22. **Acts, knowing violation of law, or omissions not in good faith or that involve intentional misconduct allows Derivative proceeding claims warrant GLA removal.**

GLA Directors continue to breach their duty by NOT spend aggregately* all Member's assessments in accord with GLA Covenant 8.01h (Complaint ¶35, 39, 42, 51, *TRO Affidavit* ¶40 (*Dist.Ct.Dkt. No. 33*), & *Complaint Exhibit J part A. p2*

Mr. O'Connell made GLA Directors aware of its fiduciary duty violation since a May 9th, 2011 Board meeting.* ¶41 *TRO Affidavit*, *Dist.Ct.Dkt. No. 33*.

(Note * At this meeting, GLA Director Boise admitted "there has been a disparity for years." "*Exhibit R, May 9, 2011, " 01:20:33 hours, ¶41 TRO Affidavit, Dist.Ct.Dkt. No. 33*. Boise also said "if we open this up and the owners knew how much of an inequity its been for many years, the would be really up in arms. They would be upset with the Board. "*Exhibit R, May 9, 2011, " 01:37:40 hours, ¶41 TRO Affidavit, Dist.Ct.Dkt. No. 33*. In response, Director Allen stated "So what you are saying is that we haven't been following the covenants since day one" "*Exhibit R, May 9, 2011, " 01:38:08 hours, ¶41 TRO Affidavit, Dist.Ct.Dkt. No. 33*. Allen then admitted "...we need the revenues in North Glastonbury to take care of the roads in South" "*Exhibit R, May 9, 2011 " 01:37:52 hours, ¶41 TRO Affidavit, Dist.Ct.Dkt. No. 33*.)

GLA & GLA Directors should be held monetarily responsible for such willful misconduct factually argued in "*TRO Request 4th Sworn Application;*" showing GLA overspend on snowplowing in High South Glastonbury by approx. \$13,181 as of 2011) & Defendants continue to overspend on High South Roads using up to 70% of the road budget here.

The Complaint injunctive claim is to restrain such GLA Defendant Directors willful misappropriation of funds as liable under GLA Art. VIII. & breach of duties for this and other misappropriation of funds;which are claims for injunction in the Complaint under a. and b.

(below); allowable claims for fraud/**breaches of fiduciary duties**. *H-D Irrigating, Inc. v. Kimble Properties, Inc.*, 2000 MT 212, ~ 25,301 Mont. 34, 8 P.3d 95.

23. Claim for relief for Defendant Directors removal (per 35-2-413 MCA by Judicial Proceeding):

GLA Directors can be held monetarily responsible for breach of fiduciary duties: per Art. VIII Articles of Incorporation & 35-2-413 MCA Removal of Directors; Derivative/Judicial Proceeding, as follows:

- a. Despite numerous objections by the O'Connell's, Directors have allowed Defendant Directors, Allen and Spallone, to be paid for Board duties; see *TRO Request 4th Sworn Application*. This is in direct violation of GLA Bylaws Art VI(K) and Art. VI(B). GLA Bylaw Art. VI(K) reads in part: "Directors shall not be compensated for attending meetings and for serving as directors;" see *TRO Request 4th Sworn Application*. GLA Bylaw Art. VI(B) states that Directors cannot perform any acts of Members or of non-Members. GLA Bylaw Art. VI(B) reads in part: "Such Directors shall in all cases act as a Board and may do all such acts or things as are not ...directed to be exercised and done by the Members;" see *TRO Request 4th Sworn Application*.)
- b. This includes breach of duties (per Art. VIII. "For a transaction from which a director derived an improper personal economic benefit." For example, GLA Directors Alyssa Allen and Rich Spallone are paid in their capacities as Board members; see *TRO Request 4th Sworn Application*. Defendant Director Spallone is a Director and Co-Chair of the Road Committee and gets paid to perform maintenance of the roads including snow plowing, and Defendant Director Allen is a Director and Co-Chair of the Managerial Committee, and Project Review Committee paid to conduct project reviews required of the GLA, and paid for various Board duties formerly done by volunteer Board members; see *TRO Request 4th Sworn Application*, & Exhibit Default C at p.1. From the period of October 2010 through June 2011, Director Allen was paid and/or reimbursed for equipment used for GLA roads totaling 3,342.73; Exhibit Default Exhibit C at p.2.

24. Claim For Relief called Declaratory Judgment (mistakenly called judicial review)

The Amended Complaint contain another claim; a form of review to ascertain all member rights in question herein and other documents in support. Although O'Connells mistakenly called this claim, judicial review in their Complaint, such language can be "liberally construed" per 27-8-102 MCA. for declaratory judgment. (see *Org. Complaint* ¶36: Declaratory Relief is to

determine if the GLA Board and future Board members must follow or not the GLA laws, and rules as listed in Exhibit J., parts A, B, C, and Exhibit N, or if the Defendants are in violation of the same which lead to attacks on member's property rights ...and potential liability" pursuant to GLA Art. VIII.)

25. Claims for relief in Exhibit J part A.

Complaint Exhibits Exhibit J., parts A, B, & C are self explanatory evidence (M.R.Evid. 901) to many claims allowed per GLA Art. VIII (Exhibit A p.3), for injunction & allowing "removal of Directors from a non-profit corporation as set forth in 35-2-423, MCA., including:

- a. Violation of Bylaw Art. VII (I) "...creation of a Committee of Directors and the appointment of members to must be approved by the greater of a majority of all Directors in office when the action is taken". Exhibit J part A p.1, 7.
- b. Violation of Bylaw Art. VII (I) Minutes of Committees have not been produced. ¶39 of *Complaint*, & ¶48 *TRO Dist.Ct.Dkt. No. 33*. "All committees shall keep Minutes reflecting the committee members attending and the actions taken." Complaint Exhibit J, part A at p.2.
- c. Fiduciary duty violation Art. of Inc. VIII. for Covenant 8.01h "The Association's road maintenance responsibility is limited by conditioned upon the Landowners' individual and collective [payment of the aggregate amount of the annual community assessment..." Exhibit J part A p.2, Complaint at ¶40, & 41 *TRO, Dist.Ct.Dkt. No. 33*
- d. "Up to 42 proxy votes cast by the GLA Board of Directors were used to remove Mr. O'Connell" (Complaint at ¶14-16, & *TRO Dist.Ct.Dkt. No. 33*. This action is contrary GLA Bylaw Art VI(B) "Such Directors shall in all cases act as a Board and may do all such acts or things as are not...directed to be exercised and done by the Members;" Complaint at ¶17, *TRO Dist.Ct.Dkt. No. 33*.

Therefore, GLA Art. of Incorporation VIII. & Exhibit J supports the Amended Complaint claim for relief for removal of Directors, for (a-d above).

26. Claim for Relief from Erickson Project Review

There is a question as to whether the Erickson project review was fully revoked by the Ericksons in 2012. Plaintiffs' were told in court pleadings (DV-12-220 and Bolen's letter) that

Ericksons have removed all requests for variances. However these pleadings are in question as to their validity, and discovery is needed to verify this.

In the mean time, Plaintiffs have warned the GLA Board for years about misusing its variance clause per GLA Covenant 12.01*. Six variances were tentatively granted the Erickson Project Review in July 2011 for the stated purpose to minimize Erickson's digging or "cuts & fills." However this purpose is contrary to Masterplan 4.2(1) "circumstances exist over which the Landowner has no control" (Complaint at ¶46 & no floor plans, no complete project review application). Instead Ericksons can minimize cuts and fills by building where land is flatter.

*GLA Covenant 12.01. Variances, Waivers. The Association reserves the right to waive or grant variances to any of the provisions of this Declaration, where, in its discretion, it believes the same to be necessary and where the same will not be injurious to the rest of the Community."

Furthermore as stated in Plaintiffs TRO Affidavit:

- (a) The Ericksons' amended project review appears to be incomplete and at least one multi-dwelling. However, Ms. Lund said that the Board does not know if the Erickson project review is a multi-dwelling since the Board has not seen building plans for the Erickson review. Yet the Board majority approved the Erickson review with this incomplete review.
- (b) Two of the four buildings for the Ericksons project review appears to violate and cause immediate and irreparable injury by denying the rights, conditions, restrictions, servitudes, limitations, reservations, etc. of all members that allows "a predominately rural community," and as per GLA Master Plan 1.2 (pg.4) and Covenant 9.05 does not allow "multi-family housing . . . in the Community."
- (c) By the Board not requiring the Ericksons to subdivide, or do a family conveyance, or use parcel 90, which legally allow four buildings on one parcel, thereby cheats the GLA membership out of these additional subdivision assessment fees as per GLA Covenant 11.03(a) "\$120 land assessment for each parcel and 11.03(b.) "\$120 dwelling assessment for each dwelling unit located on each parcel . . ."
- (d) Mr. O'Connell involved, nor seen, nor notified, nor included, nor given any knowledge as to any of the Boards actions and/or meetings to produce such "findings of facts" for and on behalf of the Erickson's project review.
- (e) Board member, Mr. O'Connell was ill-prepared to vote on such surprise "finds of facts" that were approved by the GLA Board moments after being read aloud after the private meeting on July 14, that Mr. O'Connell was barred from attending. But several findings of facts contradicts the Ericksons project review application.
- (f) At least one, if not many "findings of fact" appears to be a lie which states "the variance is the minimum possible remedy under the circumstance." Since the Ericksons have the option or remedy to subdivide, or use a family conveyance, or move two out of four proposed buildings to lot 90 as possible remedies that are available, then these three other remedies that do not even require a variance (which variances are considered a last resort, not a first remedy), then these three other remedies are all minimum possible remedies.

27. All together, Board Defendants have disregard or exceeded GLA governing contracts, or **added language not written therein and extended by implication or enlarged by construction the contracts as contrary to MT. Supreme Court rulings below**; which does not favor interpretation of contracts unless the contract language, taken as a whole, clearly has two or more distinct meanings, or so vague and ambiguous as to need interpretation.

“The Supreme Court demands lower Courts interpret restrictive covenants [and Bylaws] by looking first to the language of the covenant to ascertain its meaning. If the language is clear and explicit, the language will govern. The language of restrictive covenants should be understood in its ordinary and popular sense.” *Toavs*, 934 P.2d at 166-67.

The Montana Supreme Court “stated in *Higdem v. Whitham* (1975), 167 Mont. 201, 208-09, 536 P.2d 1185, 1189, that restrictive covenants should not be extended by implication or enlarged by construction and, in *Jarrett v. Valley Park, Inc.* (1996), 277 Mont. 333, 341, 922 P.2d 485, 489, that the district court could not “broaden” a covenant by adding that which was not contained therein.”

The MT. Supreme Court further noted, “restrictive covenants are construed under the same rules as are other contracts. *Newman v. Wittmer* (1996), 277 Mont. 1, 6, 917 P.2d 926, 929. In that respect, it is well settled that “[w]here the language of an agreement is clear and unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply the language as written.” *Carelli v. Hall* (1996), 279 Mont. 202, 209, 926 P.2d 756, 761 (citing *Audit Services, Inc. v. Systad* (1992), 252 Mont. 62, 65, 826 P.2d 549, 551). If the terms of the contract are clear, “there is nothing for the courts to interpret or construe” and the court must determine the intent of the parties from the wording of the contract alone. *Wray v. State Compensation Ins. Fund* (1994), 266 Mont. 219, 223, 879 P.2d 725, 727; *Martin v. Community Gas & Oil Co.* (1983), 205 Mont. 394, 398, 668 P.2d 243, 245. See also *Toavs v. Sayre* (1997), 281 Mont. 243, 245-46, 934 P.2d 165, 166-67. *Accord Fox Farm Estates Landowners v. Kreisch* (1997), 285 Mont. 264, 268-69, 947 P.2d 79, 82.

According to the governing documents the GLA Board without authority **extended by implication or enlarged by construction the contracts**-thus change such governing contracts without majority of members' approval. Plaintiffs **injunction claims, claims for Removal of Directors by Judicial Proceeding per §35-2-423, MCA and GLA's abuse of governing contracts** therefore fall all under breach of duty per *Art. VIII GLA Articles of Incorporation*.

CONCLUSION

As an axiom of standard of care, it is the fiduciary duty of each Director to read and become familiar with its governing documents. Exhibit affidavits show all GLA Directors are also given binder notebooks that contained all GLA laws, rules, and regulations. GLA Covenant 11.05 requires in part, that "The Association is and shall be a fiduciary in the allocation, application and use of assessment funds. The GLA Board thus has a duty but failed to perform the responsibilities provided in these covenants to the best of its ability and to the extent that assessment funds reasonably allow. These claims for Defendants' breach of director's duty of loyalty to the Corporation or its members thus have been severally met.

Furthermore in the 21 months which followed Daniel O'Connell's election to the Board, "Plaintiff(s) gathered evidence of numerous and frequent Defendant infractions and continuous violations of their GLA governing documents (Exhibits I, K, L, M, N, O, P, and Q)." This evidence the Plaintiff gave and made the GLA Board aware of their numerous, repetitive and frequent violations of the GLA contracts mentioned in such volumes of documentation. Thus Directors were made aware of their violations (see authentic evidence per M.R.Evid. 901), chose not to correct their behavior; all of which support this claim of GLA breach of duties & obligations against members; which Defendants actions caused 3 more suits and **continue** to cause irreparable injury to GLA landowner rights, conditions, restrictions, servitudes, limitations, reservations, etc. for actions without or are in excess of the jurisdiction of GLA powers governed by MCA laws and by GLA covenants/contracts.

AFFIRMATIVE PLEADINGS and CLAIMS FOR RELIEF

Ist: Defendants are barred by equitable doctrines or estoppel, laches, and/or waiver.

2nd: Plaintiffs reserve the right to rely on further affirmative pleadings which may become available, or apparent during the course of discovery or trial preparation, and reserve the right to amend this Complaint to assert any such affirmative pleadings;

3rd: Plaintiffs request Declaratory Judgment be entered in favor of Plaintiffs and against Defendants after a hearing and trial if necessary;

4th: Plaintiffs demand GLA Defendants, be restrained per §27-19-314, MCA and in the best interest of the Assoc., any or all Directors be removed per §35-2-423 & §35--8-1104, MCA as part of a derivative action for Defendants breach of duty, and this claim not be dismissed due to GLA Defendants continued breach of duties 2 years later; including for Defendants' settlement agreement violation of clause 2 (attached) to "provide O'Connells with all documents to which they are entitled..." as shown by attached Dec. 27th email request & GLA refusal of documents.

5th: This derivative action for breach of duty requests discovery; including an independent audit 5 year lookback of all GLA financial accounts and periodic audits to prevent future non-aggregate spending of GLA assessments or overspending on High South roads;

6th: Derivative proceedings include requests to make available on a website and at meetings all approved minutes of GLA Committees and Board meetings up to 2 years prior; allow members the same handouts as Board and committee members; allow member comment periods before Board votes and committee votes; give member all notices of all Board and Committee meetings and agendas using GLA newsletters and website regularly updated; insure all Board members equal representation rights and participation at meetings by barring Roberts rules of Order.

7th: Reverse all Defendants fact finding, votes and any documents regarding the Erickson project review approval for legal failings of this project review;

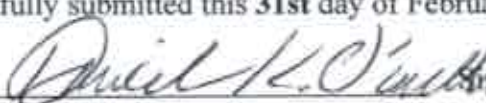

8th: Defendants repay the GLA Association per §35--2-436, MCA for any unlawful distributions of assessments (misappropriation) due to non-aggregate spending and Director compensation for board duties-both in violation of governing documents-Covenant 8.01(h), Bylaw VI.K, Art. VIII;

9th: For a period of 10 years per §35-2-423, MCA, remove any or all GLA Board as this Court finds that they breached their duty per GLA Art. VIII. for negligent/willful violation of GLA governing documents and/or exceeded their Board powers thereby;

10th: Plaintiffs request award of reasonable fees, costs, and disbursements incurred herein and by way of nominal damages, and sanctions against GLA Board payable to the Association;

11th: Plaintiffs request such other and further relief as the Court deems just and proper.

Respectfully submitted this **31st** day of February, 2013.

Signed  Signed: 
Daniel O'Connell Valery O'Connell

A true and correct copy of forgoing document(s) were sent to the following parties via first class mail on this same day to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

The GLA attorney of record:
Alanah Griffith
1184 N. 15th St. Suite #4
Bozeman, Mt. 59715

Hon. Judge David Cybulski
573 Shippe Canyon Rd.
Plentywood, Mt. 59254

By  By: 
Daniel O'Connell Valery O'Connell

Val O'Connell <valoc@fma.com>
Re: GLA Board -gla Board- , scammngham@frownform.com
Cc: rtkernger@frownform.com
From: request for GLA initial documents

To: GLA Board
From: Dan & Val O'Connell
Date: Dec 27, 2012

This is one of many requests for GLA documents since July 2012. You, the GLA Board and representatives, have continued to ignore and refuse our three written and 5 written requests for GLA documents. Thus you the GLA Board are in violation of the Aug. 2012 settlement agreement and also applicable state statutes such as below §95-2-907 below.

Such document **§907(a)** requested now include:

- All GLA Board meeting and committee meeting minutes since April 2012.
- All GLA private meeting minutes and agendas since April 2012.
- All documents approved by the Board since August, including all contractor/employee agreements with the GLA.
- Including the amended Minsk contract (as reviewed and approved by the Board Dec 17, 2012).
- Copies of all GLA receipts and expenditures for the last 3 years- including so called "GLA check details"

O'Connell's agree to pay the going copy rate of 10¢ per page in exchange for such document copies. Such documents are due now, but no later than Jan. 3rd, 2013 to avoid yet another legal action.

Shorely,
Dan & Val O'Connell
PO Box 77
Emigrant, Me. 59027
409-577-4859
valoc@fma.com

On Jul 10, 2012, at 1:53 AM, Daniel O'Connell <valoc@fma.com> wrote:

Rick and GLA,

In your July 9th e-mail to us you ask:
"Finally, I believe the Board is in the process of assembling the material you recently requested, even though you will have not discussed with me as to the propriety of the process for which you have requested them. Sorry waiting that you have the right as GLA members to inspect the documents, and that you are simply concerned about the matters addressed therein, does not take the requirements of the statute."

We disagree with your conclusions in your July 9th e-mail. Also, waiting almost two months for any documents is an unacceptable delay. If you delay again for more five business days without a proper excuse, then there will be another lawsuit per Accountant law 35-2-907(2) and 35-2-909(5) and the sections and statutes therein where applicable. **NOTE:** These statutes allow for 5 business days notice to be given from the time we walk to school and come.

Out of respect, tonight at our July 9th GLA Board meeting, we requested to view and copy the minutes that were available to teacher's corporate historian book after said their rights to meetings. We were denied this right that your own clients were not allowed to have. May depositors at meetings, if it happens again then we will consider that teachers profited here.

Richard Boler said tonight all request are to go to you for approval by you, Rick. Here is our written request notice:

Your clients have 5 business days, which is until the 17th, to allow us to view and copy:

1. the GLA Board meeting minutes from April 22nd, 2012, May 14, 2012, and June 18th, 2012 (minutes approved tonight without almost no change)
2. We also request GLA Board private meeting minutes and agendas held on these same days April 23rd, 2012, May 14, 2012, and June 18th, 2012 (with any legal/Confidential Information redacted, yet at least a general issue of what was discussed in the meeting)
3. We also request to view and copy any private review documents and any other documents approved by the Board April 23rd, 2012, May 14, 2012, and June 18th, 2012.

35-2-907 is applicable here and says:

- (1) A member may inspect and copy the records identified in subsection (2), only if:
 - (a) the member's demand is made in good faith and for a proper purpose;
 - (b) the member declares with reasonable particularity the purpose and the records the member desires to inspect; and
 - (c) the records are directly connected with this purpose.
- (4) This section does not affect:
 - (a) the right of a member to inspect records under 35-2-515(e), if the member is in litigation with the corporation; ...

December 27, 2012 1:48 PM

VAI O'Connell <vai@mcac.com>
To: Alannah Griffin <alannah@popcornfestival.com>
Cc: Undelivered recipients <>
Reply to GLA/Alannah email regarding GLA receipts

Date: evening of Oct. 7, 2012
From: Daniel and Val O'Connell
Email: To: Alannah Griffin, Alyssa Khan, Richard Bowen, Denise Kox
To the GLA Board of Directors and legal council named above.

Regarding charges for GLA documents and receipts, your email of Oct. 4th said:

With regard to your recent request for the check books (receipts) and other documents the Board is happy to make those available to you. Of course pursuant to Minnesota law, you will have to pay for the cost the Board incurs for preparing such information. Furthermore, it has come to my attention that the Board has not yet billed you for their cost on collecting the Draft Assessment Policy, Meeting Minutes, Membership List, Certificate of Election Agreement, Stock Management Agreement, Board Confidentiality Agreements and Board Conflict of Interest Statements for you in July. It is my understanding that these documents were not part of one pending litigation in July. As you can see from the invoice to the Board, the Board paid \$60.00 to collect those documents. The Board has paid that amount. Pursuant to Minnesota law, you owe the Board \$60.00 for preparing those documents. Please send the Board a check for that amount. The Board has sent a request for its management's consent to produce the check details and other documents. Once they are collected, they will be available for you upon payment of this invoice, and the invoice generated regarding your request for the check details and other documents. Please note, with your request for the minutes of the private meeting(s), some of the information is protected by attorney-client privilege. It will take a fairly significant time to redact the document(s). If you want to withdraw your request, then we understand. Once both invoices are paid, you will receive the requested documents.

This GLA statement above is contrary to the following GLA Bylaws and state statutes:

Bylaw Art. VIII(f) which says, "Notice of Annual Meetings of Members shall be accompanied by the estimated budget of capital and operating expenses for the forthcoming fiscal year prepared by or on behalf of the Board of Directors. The Board may not increase the annual operating expense budget by more than twenty percent (20%) over the preceding year without the approval of the Members. The Board shall cause a copy of a statement to substantially be reviewed showing receipts and expenditures for the preceding fiscal year. This statement shall be mailed to each Member within thirty (30) days after the end of the fiscal year and presented at the Annual Meeting."

Bylaw Art. VIII (h) "... In any event, the Association will furnish the Members with a statement of the receipts and expenditures of the Association for each fiscal year."

Bylaw Art. VIII (i) "Inspection of Books. The financial reports and membership records of the Association shall be available at the principal office of the Association for inspection at reasonable times by any Member" or within 5 business days in 35-2-907, MCA allows

These GLA Bylaws above require the GLA to give to all members "receipts and expenditures for the preceding fiscal year." However GLA receipts have never been given to members. Notice the Bylaw above does not require any payment to receive copies of such "receipts and expenditures."

That the O'Connells demand without charge that the GLA mail to all members the (check, detail receipts for the past three years on or before October 15th, 2012 and also present such documents at the annual meeting. Note: the GLA has NO authority to charge members for such copies of documents as "receipts and expenditures" as allowed by these Bylaws

Furthermore, the GLA Bylaws allow for members to inspect or copy other member records such as membership lists and databases.

State statute, 35-2-906. Corporate records says in part, "(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. (5) within 2 business days. (35-2-906a MCA further states, "(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the member. The charge may not exceed the ordinary cost of production or reproduction of the records."

However the state statutes above only require for such documents only a reasonable charge be imposed not to exceed "reproduction of the records." Also these statutes say such documents must be in a "form capable of conversion into written form within a reasonable time." This means a digital form or written form ready available and indexed so that it does not require hours of research to go find such documents.

Thus the only documents requested by the O'Connells for which a charge can be imposed is for copies of member lists and records.

Therefore, a reasonable amount to charge for copies of any such member list or minutes should three be the industry standard of 10 cents per page for such readily available documents.

The O'Connells written requests for Board meeting minutes, including archive meeting minutes has not been forthcoming even after 2 1/2 months. Therefore this document request must be fulfilled by Oct. 15th, 2012 or legal action will be warranted in violation of the settlement agreement that allows such documents.

Also note that all documents already received by the O'Connells on or before July 20th were part of the settlement request and processing that did not require payment. Therefore any attempt to collect \$60.00 for such documents violates the settlement agreement for case DV-11-183 which states, "Each party shall bear its own attorney's fees and costs."

Sincerely,
Daniel and Val O'Connell
PO Box 77
Emeryville, ME 59927

October 7, 2012 4:00 PM

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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL K. O'CONNELL and VALERY)
A. O'CONNELL & for and on behalf of)
Members of the Glastonbury Landowners)
Association,)
)
) Plaintiffs,)
)
) v.)
)
) GLASTONBURY LANDOWNERS)
) ASSOCIATION, INC. (the GLA)
) Corporation),)
)
) Defendant.)
)

Cause No. DV-2011-193

STIPULATED
SETTLEMENT AGREEMENT

The parties to the above-captioned matter met for mediation on the 20th day of July, 2012,
and agreed as follows:

1. The Glastonbury Landowners Association, Inc., hereinafter referred to as "GLA,"
Board of Directors will provide a current GLA membership list to the O'Connells upon request, but
not more than two times a year.

2. The GLA will provide O'Connells with all documents to which they are entitled
pursuant to the Montana Non-Profit Corporation Act and GLA By-Laws upon request.

1 3. The GLA Board President will vote in accordance with the GLA By-Laws and not
2 solely for the purpose of breaking a tie vote.

3 4. The GLA Board will rescind the existing prohibition against recording member
4 meetings.

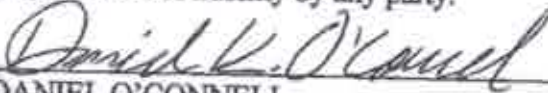
5 5. The parties will dismiss the above-captioned Complaint and Counter-claim with
6 prejudice.
7


8 6. The GLA Directors may not cast proxy votes for members in any capacity; however,
9 they may cast their own votes as landowners. The Proxy Authorization form will be amended
10 accordingly.

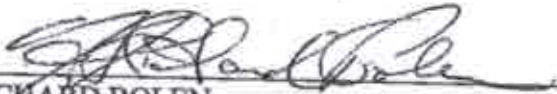
11 7. This Stipulated Agreement is subject to ratification by the GLA Board.


12 8. Each party shall bear its own attorney's fees and costs.

13 9. No provision included in this Stipulated Settlement Agreement shall be construed as
14 an admission of liability by any party.
15

16 
17 DANIEL O'CONNELL
18 Plaintiff
19 Date of Signature: 7/20/2012


VALERY O'CONNELL
Plaintiff
Date of Signature: July 20, 2012

20 
21 RICHARD BOLEN
22 President, Glastonbury Landowners Association
23 Defendant
24 Date of Signature: 07/20/2012

25 
26 FREDERICK P. LANDERS, JR.
27 Counsel for Glastonbury Landowners Association
28 Date of Signature: 7-20-12