

Daniel & Val O'Connell-PRO SE
P.O. Box 77
Emigrant, Mt. 59027
406-577-6339 valoc@mac.com

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.)

Glastonbury Landowners Association, Inc.)
& current GLA Board of Directors)

Defendant(s))

) **PLAINTIFFS REPLY & MORE**
) **PARTIAL DISCOVERY REQUESTED**
) **FOR DOCUMENTS & "ADMISSIONS"**

Plaintiffs & GLA members-Daniel and Valery O'Connell, hereby move for the court to order GLA Defendants to fully respond to the June 28, 2013 discovery requests received by Defendants. As requested and underlined below, Plaintiffs request clarification and further discovery from Defendants (Per MRCP., Rules 26 & 36).

Discovery Request #1 & 14:

Defendants wrongly claim they do not have to verify (certify) proxies contrary to statute 35-1-525 part(2). This statute clearly requires either transmission or signature verification of a proxy. For clarification, Plaintiffs ask if the Defendants verified if any of the members proxies listed below were valid? Also Plaintiffs ask if the Defendants notified any of the following members listed below to let them know that their proxies can not be given to Directors? For instance Mr. Rattner sent a proxy in Nov. 2011 (000006) and again in 2012 (000010) both designating the Board Directors to cast proxy votes. GLA Defendants admit for request #1 it received proxy documents

(000001 through 000020) that could be used for "the 2011, 2012 & 2013 annual elections" of the GLA. GLA Bylaw V(I)(6) says, a "proxy shall be effective and remain in force until voluntarily revoked, amended or terminated by operation of law, until the expiration of one year after its execution or until the date of the next Annual Meeting after the proxy was used at the previous Annual Meeting." These proxy ballots 000001-000009 represent 17 proxies and since each proxy votes three times per membership, they represents 51 votes total were cast by Board directors for 2011 elections & 8 proxies x 3=24 votes cast by Board Directors for 2012 elections:

000001 designates Board Director Alyssa Allen to cast proxy votes for Ms. De Leon 2010-2011
000001 designates Board Director Laura Boise to cast proxy votes for Mr. Stein 2010-2011
000002 designates The Board Directors to cast proxy votes for Ms. Moe 2010-2011
000003 designates The Board Directors to cast 4 proxy votes for Mr. Burke 2010-2011
000003 designates The Board Directors to cast proxy votes for Ms. Mogetz 2010-2011
000004 designates The Board Directors to cast proxy votes for Mr. Lee 2010-2011
000005 designates The Board Directors to cast proxy votes for Ms. Lincoln 2011-2012
000005 designates The Board Directors to cast proxy votes for Mr. & Mrs. Cragg 2011-2012
000006 designates Board Director Mr. Spallone to cast 2 proxy votes for Mr. Rattner 2011-2012
000006 designates Board Director Laura Boise to cast proxy votes for Abram Boise 2011-2012
000007 designates Board Director Alyssa Allen to cast proxy votes for Ms. Bowden 2011-2012
000008 designates The Board Directors to cast proxy votes for Solso (Legacy Ranch) 2011-2012
000009 designates The Board Directors to cast proxy votes for Ms. Boderek 2011-2012

Since these proxies above were used for 2011-2012 elections after the (attached) settlement agreement was signed, they violate that agreement ¶6, and illegally skewed 2011-2012 elections.

Only the following proxies were stamped "unused because given to board member:"

000010 designates Board Director Mr. Spallone to cast 2 proxy votes for Mr. Rattner & Ms. Green 2012 & 2013
000011 designates Board Director Mr. Spallone to cast proxy votes for Mr. Davis 2012-2013
000012 designates Board Director Ms. Stenberg to cast proxy votes for Mr. Palk 2012-2013
000013 designates Board Director Laura Boise to cast proxy votes for Quarles 2012-2013
000014 designates Board Director Ms. Stenberg to cast proxy votes for Ms. Ulrich 2012-2013

Discovery Request #2 asked for:

"A signed statement from the GLA Board affirming yea or ney they approved each and every GLA committee member for 2011, & 2012, & 2013; as proof include documents of such minutes

and any other documents that shows approved names of all committees members, include minutes of election committee members approved; & include all duties/ authorities given to all approved committee members & include the committee type—either advisory or Committee of Directors.* ...”

For all the GLA committees identified by name (in Documents 000022 through 000028), GLA Defendants failed to identify committee type as either a “committee of directors” or else an “advisory committee” as discovery request #2 (cited above) required. The court should order Defendants to do so, for Defendants failure to object otherwise to this request.

Also, GLA Defendants failed to fully answer discovery for request #2 (cited above), because Defendants failed to identify ALL election committee members and failed to identify ALL road committee members, and only gave a partial list of committee members. The court should order Defendants to do so pursuant to GLA Bylaw VI(I), because Defendants admit and should be aware of committee members they said they approved for committees. As proof, Defendants discovery response #2 (pg. 3) said, “GLA admits that it approved every committee member for 2011, 2012, and 2013.”

Also for the GLA committees identified by name (in Documents 000022 through 000028), GLA Defendants failed to identify any committee type as either a “committee of directors” or else an “advisory committee” as discovery #2 (cited above) required. The court should order Defendants to do so pursuant to GLA Bylaw VI(I), for Defendants failure to object otherwise to this request.

Discovery Request #3 & 13:

Defendants admit they “denied” Plaintiffs requested documents allowed per attached settlement agreement and also denied Plaintiffs “any approved GLA minutes since August 2012 as Plaintiffs have refused to pay reasonable “costs of labor and material” as required by Mont. Code Ann.

§35-2-908. Plaintiffs request clarification of this answer by asking Defendants do so called “costs of labor and material” include the costs of labor to research and find such documents? Also determine how much money is “reasonable costs of labor and material” to provide one page of the Aug. 2011 GLA minutes? Do the Defendants have a fee amount per page?

Also is Rich Spalone an owner of R& B builders as paid certain fees by the GLA? Was or is Alyssa Allen an owner of “Angelis Design” as paid certain fees by the GLA? Was or is Sandra Irby an owner of “Irby Enterprises” as paid certain fees by the GLA? Did Sandra Irby and James Gough collect and/or count ballots for 2011 GLA Board election?, and for 2010 also?

Discovery Request #4 & #5:

Plaintiffs’ discovery also asked Defendants to “include any audits documents completed since 2010, otherwise state no audits were done.” Defendants failed to include any audit documents since 2010 and failed to “otherwise state no audits were done.” The court should order Defendants to do so, for Defendants failure to object otherwise to this request. Also the GLA admits it denied members “2010 receipts and expenditures.” Plaintiffs request clarification as to why Defendants denied its members a copy of the “2010 receipts and expenditures.”

Defendants also claim “it gave all GLA members a copy of GLA receipts and expenditures for the fiscal years 2011 and 2012 by mail.” Plaintiffs request clarification as to if documents 000182 through 000194 are the same “receipts and expenditures ...2011 and 2012” allegedly provided its members 2011 & 2012 and what were the exact dates the documents were mailed to all members? This is because Plaintiffs and other neighbors never received such documents by mail.

Also for clarification, answer yea or ney to 1-4: the GLA Board decided 1. "check details" were NOT to be part of the "receipts and expenditures" mailed to members? and decided 2. "deposit details" were NOT part of the "receipts and expenditures" mailed to all members? and decided 3. "cancelled checks" were NOT part of the "receipts and expenditures" mailed to all members? and decided 4. "credit card & bank statements" were NOT part of the "receipts and expenditures" mailed to all members? Also has the GLA ever told all its members that any of these other documents 1-4 listed above are available to them upon requests? If so, provide written proof of such notice to all members.

Discovery Request #6 AND #9:

Discovery Request #6 asked for: "A signed statement from the GLA Board affirming whether or not GLA due process notices were given to GLA members regarding: approval of the Erickson project review and/or "finding of facts," and/or new guest house assessment, and/or Minnick contract, and/or regarding two counterclaims filed against O'Connells; include all documents of due process notices given to GLA members in the last 3 years (per GLA Bylaw XI. part C., of Exhibit C)."

The court should order Defendants to provide requested answer & documents for this issue unjustly denied Plaintiffs. This is because, Defendants have completely denied this request for an answer to this request and denied all documents above relevant to these two claims, and denial of such discovery negatively prejudices Plaintiffs claims for these matters.

None the less, res judicata does not apply, and is not the same issues as a prior case, and the other case (DV-12-220) is pending on appeal, thus not settled (Plaintiffs appeal shows they were denied discovery for that case issue.). Plaintiffs summary judgment response already proved that this case issue regarding the Erickson project review is not the same issue as another case involving two Erickson contracts with the GLA. As proof, Erickson project "finding of facts" and "due process" issues in this case were NOT litigated and decided in that other case

DV-12-220, Admittedly, Defendants discovery response (pg. 5) does not deny this claim is about “due process” and “finding of facts”.

Thus Defendants response says regarding Erickson project “due process” given to GLA members in the last three years” such [due process] notices are given by means of the GLA newsletter...” But such “GLA Newsletter” Documents 000162 through 000181 make NO mention of Erickson project nor “finding of facts,” nor any due process requests for input BEFORE action is taken on the Erickson issues when such “finding of facts” were illegally imposed on all members common property (adjacent to Erickson property) without all member due process, notice, or input as required per Bylaw XI(C). (“finding of facts” attached to this amended complaint)

Discovery Request #7:

After this lawsuit was filed June 2011 requesting such vote tallies, GLA Defendants now respond that since 2011, it started to publish GLA election vote tallies in the GLA newsletter. Plaintiffs request copies of ALL GLA newsletters since 2011 to verify this response.

GLA also says prior to 2011, vote tallies were “available upon request.” Thus Defendants admit members were required to request Board election results from 1997 through 2010 (before 2011). More importantly, this requirement is what the GLA Bylaws call a “rule or regulation” imposed upon all members, and thus required due process notice and input from its members. Therefore Plaintiffs request Defendants provide proof of any such due process notices ever given to any of its members that vote tallies were “available upon request.”

Discovery Request #8:

GLA Covenant 11.02 says, “assessments ... shall be used for the operation, maintenance, repair and improvement of roads, trails, easements, common use land, security entrances, ditches,

canals, drainages, machinery, vehicles, equipment and other facilities serving the Community; for snowplowing, for structures, ...”

Plaintiffs request clarification of Defendants response to this issue by answering if maintaining GLA roads, snowplowing, and “managing” the GLA are services required by the Association Directors, per covenant 11.02 that says, “assessments ... shall be used for the operation, maintenance, repair and improvement of roads, for snowplowing; ,,, and for such other uses and purposes which are contemplated in these covenants.”

Also without objection, Defendants failed to provide any written bids as requested, and failed to provide job duties, authorities, and amount of payments for every GLA agents, employees, contractor & Director paid with GLA monies. Plaintiffs thus ask the court to require the GLA to provide such documents and also state no written bids exists.

Discovery Request #10 & 11:

MasterPlan 7.01 says, “Common Use Land. Easement. Covenants. Three of the parcels described on Exhibit “B” are hereby designated as “common use land.” A nonexclusive, perpetual easement and right-of-way is hereby granted upon said common use parcels described below to each landowner... a. The parcels affected by this easement are Parcel Nos. 96 and 102 [adjacent to the Ericksons] of Certificate of Survey No. 616-A (Glastonbury South) ...”

This shows the association shares nonexclusive rights to the property in question, thus all landowners have rights to the property adjacent to Ericksons. The Association is member owned and member run for which all members own all assets & property of the Association. But the Defendants council falsely stated otherwise for this issue. But this Masterplan 7.01 above clearly shows GLA members have rights to the property adjacent to Ericksons that the Association does NOT have exclusive rights to this property, for which all members own this Association & property. Therefore Defendants admit all members were not contacts, but should have been

contacted for the Erickson project review adjacent to their property, especially since the Erickson "finding of facts" specifically mentions members common use property.

Discovery Request #12:

Actually the GLA Defendants have misled the court to say they use Roberts rules of Order and that the GLA President votes, since Roberts rules of Order attached to the complaint says the GLA President does not vote except to break a tie vote. However Defendants already admitted in the DV-11-193 settlement agreement that the GLA President should not be barred from voting.

Discovery Request #14 said:

"Provide document copies of the current GLA membership list including name, address, email address, parcel #, including number of votes AND proxy votes each member has."

Defendants failed to comply with this request in full, because the documents 000466 through 000478 did not include who is eligible to vote based on whether or not they are current in their membership dues, and absent requested emails. Plaintiffs request a corrected membership list that includes all email AND also phone contacts that GLA members have voluntarily given to the GLA; and should denote who is eligible to vote based on if they paid assessments in full.

For the last 5 years at all annual elections, the GLA Board has requested and received many members' emails and phone numbers, and they did not deny that they have them.

Defendants reason for denial of this discovery merely claimed the GLA members' emails and phone numbers voluntarily given to the GLA Board is somehow "confidential and violate members right to privacy..." and "not relevant." However nothing in the GLA governing documents or laws prevents this information given for GLA election purposes which is relevant to this due process issue and election issue. Plaintiffs are election candidates as are the GLA Board Directors that were voluntarily given these member emails and phone numbers. Thus the

Board can freely use such emails and phone numbers to contact members, yet they deprive all other candidates such as Plaintiffs from this same benefit. The fact that members freely gave emails and phone numbers to the Board is also proof that such information is not confidential.

Furthermore, for Defendants to claim such member contact information is "confidential" is a "new Rules or Regulation" enacted without any due process, nor notice nor input to members in violation of Bylaw XI(C) below. Therefore such member emails and phone numbers denied Plaintiffs are relevant in many ways to this complaint and discovery.

ARTICLE XI (C.) "Due Process. Prior to making any new Rules or Regulations, or taking any action to enforce any of the Covenants, Bylaws, Rules or Regulations, the Association, acting through the Board of Directors and officers, shall provide reasonable written notice in accordance with Article V, paragraph D, to all of the Members (in the case of rule-making) or to all directly- affected Members (in the case of a proposed enforcement action) and a reasonable opportunity for any such Member to be heard and to give written or oral comment to the Board of Directors or its designee(s). Enforcement actions shall also include a reasonable fact-finding process whereby relevant information related to all sides of the issue will be gathered and evaluated. Any member of the Board of Directors whose personal involvement in the matter at issue might, in the majority opinion of the other Board members, detrimentally affect his or her ability to be impartial, shall abstain from participation or voting in such proceedings."

Discovery requested above & serviced on Plaintiffs is due 30 days from service of this request.

Respectfully submitted this 9th day of August, 2013.

Signed: Daniel K. O'Connell Signed: Valery O'Connell
Daniel O'Connell Valery O'Connell

Certificate of Service

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

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

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

GLA Secretary Janet Naclerio
119 Capricorn Drive
Emigrant Mt. 59827

Brown Law Firm
315 North 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

Signed: Daniel K. O'Connell Signed: Valery O'Connell
Daniel O'Connell Valery O'Connell

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

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

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

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

14
15 David K. O'Connell
16 DANIEL O'CONNELL
17 Plaintiff
18 Date of Signature: 7/20/2012

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

19
20 Richard Bolen
21 RICHARD BOLEN
22 President, Glastonbury Landowners Association
23 Defendant
24 Date of Signature: 07/30/2012

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