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PARK COUNTY CLERK
OF DISTRICT COURT
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FILED
BY JODI SARRAZIN

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL & VALERY O'CONNELL)
for & on behalf of GLA members)

Petitioners,)

v.)

GLASTONBURY LANDOWNERS')
ASSOCIATION, INC. ; a)
member based non-profit corporation)

Respondent(s))

Cause No. DV 12-164

**AFFIDAVIT in support of WRITS of
PROHIBITION & MANDAMUS**

We, Daniel K. O'Connell, and Valery A. O'Connell, duly swear (or affirm) under oath that:

To the best of our knowledge, the material facts stated herein and within the motion for a writ of Mandamus and Writ of Prohibition by Petitioners above are true. Also, to the best of our knowledge, the contents of the emails and other exhibits attached to the writs by Petitioners above were received by us or sent to us and are written by the senders therein and contain details of the GLA actions in question.

- (a) We are both over 18 years of age, being of sound mind and body, and have personal knowledge of the matters discussed herein.
- (b) We are GLA landowners and current members of the GLA, Inc. who conducts business primarily in Park County, Montana at the time the petition was filed.

- (c) Respondent—the GLA, Inc. Board of Directors—are the elected Directors for the GLA Association, whose official duties regarding this petition require them to conduct the business and affairs of the GLA Administration on behalf of the Petitioners and other GLA members.
- (d) There is no other plain, speedy and adequate remedy in the ordinary course of law to compel Respondents to accept and perform their GLA duties delegated to Minnick, a writ of mandamus is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth in the petition, impugns the rights of Petitioner(s).
- (e) There is no other plain, speedy and adequate remedy in the ordinary course of law to arrests the current proceedings of the GLA corporation board of directors- Respondents as such proceedings are without or in excess of the jurisdiction of such GLA corporation board of Directors, a writ of prohibition is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth in the petition, impugns the rights of Petitioner(s).
- (f) Except by a vote of 51% of GLA members, a contract can not nullify existing GLA governing documents that run with the land. Yet numerous GLA bylaws and covenants below are being nullified, and/or violated by two contracts entered into by the GLA Inc. with GLA landowners called the Ericksons to prohibit any residential building use of their parcel 90 and more. Also, another contract between the GLA and Minnick Management, Inc. delegates away most GLA powers and/or duties to Minnick Management, a for-profit corporation, for which the GLA illegally gave Minnick the “exclusive right right to operate, control, and manage the certain property known as the Community of Glastonbury in Emigrant, Montana;” for which the same properties have always been owned, operated, controlled, and managed by GLA landowners.

- (g) On July 18, 2012 for the first time and again on July 20th, the OConnells received via email from the GLA attorney Rick Landers, all the attached Erickson contracts and the Minnick Management, Inc. contract. The Minnick contract is signed, but the GLA, Inc. refused to provide signed copies of the Erickson contracts that were approved last year by a majority vote of the GLA Board of Directors and available July (see attached email dated September 20, 2012). Such email from GLA attorney-Landers also admits that the GLA is currently in the process of delegating to Minnick their GLA powers and duties stated within that Minnick contract.
- (h) All GLA members have exclusive ownership rights of their respective parcels as landowners. Thus the GLA, Inc. Directors have no authority to "operate" landowners parcels, and the Directors have no **exclusive** right "to control, and manage" any member property within the GLA, nor the right to delegate any such authority to Minnick as was given without landowners permission and without or in excess of the jurisdiction of the GLA Directors.
- (i) In fact, 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." All of the GLA duties delegated to Minnick are contrary to the GLA Bylaw VI(B) and more, because of the GLAs limited powers to delegate only "**necessary**" powers to committees, and "**necessary**" duties to agents (that necessarily require skills not possessed by 12 GLA Board members).
- (j) For the Erickson contracts, one of its stated purposes says the GLA grants the Ericksons requested variances that allowed four residences instead of the allowable 2 on original undivided parcel 91 (contrary to Masterplan 1.1*). On pg.1 of the "Declaration of Building and Transfer Restrictions Easement," it states such condition for granting such variances are in exchange for requiring the Ericksons to never build residences on their adjoining original undivided parcel 90, and also requires the Ericksons to enter into a restrictive easement to never sell their parcel 90 separately from parcel 91; which contractually enjoins the two parcels that are both still legally divided parcels.

- (k) However, the GLA Board must carry into effect the Bylaw IV(B) rights that run with the land, and thus can not restrict such land use to not build on Ericksons' parcel 90 as afforded under the GLA governing documents (Bylaw, Covenants and the Master Plan) cited in the petition;
- (l) Also for which this same GLA/Erickson contract states on page 1, it is for "inperpetuity," but was not approved by 51% of members for contracts more than 5 years as required per GLA Bylaw VI(B)(2), and also contrary to 72-2-1002 & 1005, MCA.
- (m) The GLA conditions above are contrary to criteria set forth in GLA Masterplan section 1.1 above for limiting residences to 2 houses; and for granting Ericksons variances in violation of Masterplan 1.1, and 4.0, Covenant 6.01; and Masterplan 4.0; and without neighborhood review as required by Masterplan 4.1; and contrary to contracts under Bylaw VI.(B)(2); and contrary to 70-17-101, MCA, and GLA Bylaws such as Bylaw IV(B) and covenants stipulating that legally separate parcels are afforded equal and separate rights that run with this land, and more stated in the petition.
- (n) Per GLA Bylaw VI(B) cited in the petition, the GLA can only delegate duties only **"as necessary"** such as:
- road maintenance and accounting duties, thus excludes all other powers AND duties given to Minnick as the Minnick contract lists such as: "collection of GLA assessments", "file liens" against members, "pay [GLA] bills," "prepare annual budget," "pay taxes," "handle payroll," do most "GLA administrative duties," "take meeting minutes," "interact with landowners" wanting to contact the GLA Board for various reasons such as "send letters" to members and conduct GLA elections such as "ballot collection, tally, and reporting," keep & maintain all "GLA records" and "respond to all basic landowner inquires" and "covenant violations," and oversight "management of GLA... on-site services," "contractors," "contracts," and "administrate covenant enforcement ..."
- (o) For the past 15 years except for road maintenance and accounting, the 12 GLA Board of Directors or committees have personally and collectively performed all these GLA duties listed above. Thus proving that it is not **"necessary"** to delegate any and all

such duties to another corporation and agent such as Minnick Management, and thus contrary to state statute 35-2-118(1), MCA. and GLA Bylaw VII.(E-H), and GLA Bylaw VI B. requirements that **“the business and affairs of the Association shall be managed by the [GLA] Board of Directors.”**

- (p) **GLA Bylaw VII.(E-H)** requires such GLA Director officers to, “perform such other duties as are incident to his office or are properly required of him by the Board or President.”
- (q) Such powers AND duties incident to the office of GLA Treasurer, yet illegally delegated to Minnick are listed in the Minnick contract (page 1-2) under the headings of; “Collection/disbursement of Monies,” “Reporting” “Employee/Independent Contractor Accounting & Reporting.” Such powers AND duties incident to the office of GLA Secretary, yet illegally delegated to Minnick are listed in the Minnick contract (page 2-3) under the headings of; “Administrative Management,” “Association Records,” “Meetings,” “Communications,” & “Site Mngement.”
- (r) GLA Covenants or Bylaws does not allow collection of assessments to be turned over to another corporation for collection of unpaid collections; such as to a collection agency or Minnick, which was given the power and duty to “collect delinquent assessments, penalties and interest;” nor allow “50% of collected late fees from delinquent homeowners [to] become property of Minnick Management, Inc.” (see Minnick contract page 4, part 5); all of which is contrary to Covenant 11.06 cited in the petition that specifically requires “the Association” to “collect delinquent assessments, penalties and interest.” **Yet in exchange for Minnick performing all these same GLA duties and more, the GLA agreed to give away it duties AND powers to Minnick to collect such fees.**
- (s) **It is no excuse, nor is it “necessary” to delegate away most GLA power or duties to Minnick that performed for the last 15 years by the GLA Directors, and for which 12 GLA Board of Directors simply “don’t want to do,” or perform now.**

But such was the excuse verbally stated by the GLA Directors at its May 2012

Board meeting.

- (t) Thus as pursuant to 27-26-101, MCA., et al., except for delegated duties for road maintenance and accounting duties not able to be done by the GLA Treasurer, this **writ of mandamus** is necessary to compel the GLA Association Board of Directors to take back, carry out, and perform all such powers AND duties it delegated to Minnick in the Minnick contract; and to otherwise "induce breach of the corporation's contracts" with Minnick and the Ericksons, as in the best interest of the GLA corporation, since all these contracts violate governing documents, and/or state statutes, and/or unconstitutional, and adverse to GLA members property possession and rights as cited herein and in the petition; and this **writ of prohibition** is necessary to arrest those excessive or unauthorized GLA duties and limited powers contained in Erickson contracts AND the Minnick contracts which thus impugns the rights of Petitioner(s); or until such time as a hearing can prove why the GLA should breach those contracts, as in the best interest of the GLA corporation.

FURTHER AFFIANT SAYETH NOT.

DATED this 24 day of Sept., 2012, by Daniel K. and Valery A. O'Connell

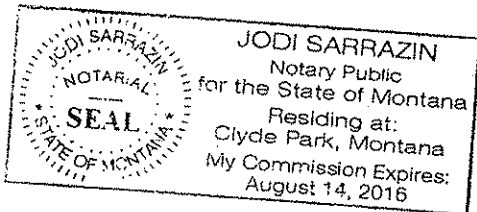
For Notary: State of MT County of PARK

Signed and sworn to (or affirmed) before me on 9/24/12 (date) by:

Signed: Valery O'Connell (person(s) making statement)

Signed: Daniel K. O'Connell (person(s) making statement)

SEAL:



Jodi Sarrazin
(Notarial officer)
Name Jodi Sarrazin Title (Rank)

Clyde Park (Residing at) My commission expires: 08/14/16

Val O'Connell <valoc@mac.com>
To: Rick Landers <rlanders@axilonlaw.com>
Cc: GLA Exec Committee <gLA Exec Committee>
Re: The Erickson documents

September 20, 2012 10:57 PM

Rick,

Two months is not a reasonable time to wait for documents. We request your clients comply by Friday with the signed Erickson documents and private meeting minutes or else we will take legal action.

The O'Connells

On Sep 20, 2012, at 3:37 PM, Rick Landers <rlanders@axilonlaw.com> wrote:

Dan,

That is true that while the litigation was pending we stated that all requests should come through me. However, now that the 11-193 case is over I am trying to wind down my involvement in these matters. As much as you have complained about the legal fees being incurred by the GLA, I would think you would appreciate that.

You are free to communicate directly with the Board about anything at this point, particularly on matters like this. I'm not involved in the GLA's day to day business so I don't even know if it has been signed. When the Board has a question about something related to your requests, they can come to me and I will become involved as necessary.

Nobody is playing games. As far as I know the Board is in the process of responding to your previous requests. The GLA is still in a transition between the previous bookkeeper/secretary and Minnick, and with a volunteer board it takes time to gather records. Therefore you should continue to be flexible in allowing them a reasonable time to respond.

Rick

-----Original Message-----

From: Daniel OConnell [mailto:dko@me.com]
Sent: Thursday, September 20, 2012 2:20 PM
To: Rick Landers
Subject: Re: The Erickson documents

Rick,

You know full well that the only reason we have ever made any request of the GLA through you is that YOU and the Board have required it. In fact in a recent meeting with Richard and Alyssa they stated that the reason they had not honored a recent request for documents made more than a month ago, is that YOU had not taken care of it yet.

We will be only too happy to deal with the Board in such future requests. But that does not absolve you of the duty to comply with the law on all of our past requests.

It's not time to play games, but to show some contrition. As it sits now the GLA is in violation of the very terms of the settlement agreement in 193. And once again you are helping them to violate the law. I think the court would easily find that sanctions are in order. We are still waiting for signed Erickson contract documents and private meeting minutes, check detail statements of the last 3 years.

Dan

On Sep 20, 2012, at 12:07 PM, Rick Landers <rlanders@axilonlaw.com> wrote:

Dan,
Please direct inquiries like this to the Board.
Rick

-----Original Message-----

From: Daniel OConnell [mailto:dko@me.com]
Sent: Wednesday, September 19, 2012 1:06 AM
To: Rick Landers
Subject: The Erickson documents

Rick,