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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

Daniel K. O'Connell & Valery A. O'Connell )  
& for and on behalf of members of the )  
Glastonbury Landowners Association. )  
Plaintiff(s), )  
v. )  
Glastonbury Landowners Association, Inc. )  
Board of Directors )  
Defendant(s) )

BY \_\_\_\_\_  
DEPUTY  
Cause No. DV-2012- 789C  
PETITION FOR TEMPORARY &  
PERMANENT RESTRAINING ORDER

Come now Plaintiffs, Daniel and Valery O'Connell, & for and on behalf of all GLA members, do hereby (& with attached affidavit) request a Temporary Restraining Order (or TRO) to restrain the actions of the Defendants, the Glastonbury Landowners Association Inc. Board of Directors, hereafter called the GLA Board Defendants.

1. On or about May 2012, the GLA added a new contact or address (PO Box 1862), and a new principle place of business for which GLA documents are kept at the offices of Minnick Management (GLA agent) in Bozeman, Gallatin County, Montana. The GLA Inc. has NO business office in Emigrant, MT., but the GLA also conducts business (Board meetings), maintains property and a contact address (PO Box 312) in Emigrant, Montana.
2. Plaintiffs, Daniel and Valery O'Connell are members of the GLA, and reside at their Emigrant, Mt. private property. For and on behalf of GLA members, this TRO is also for any or all of the 300 members residing in Montana and 100 +NON-Montana members.

3. The Defendants, the GLA Inc. Board of Directors are as follows: Richard Bolen (President), Laura Boise (Vice-President), Janet Naclerio (Secretary), Sheridan Stenburg (Treasurer), Alyssa Allen (Manager), William Smith, Gerald Dubiel, Paul Rantillo, Sean Halling, Kenneth Haug, Rich Spallone, Scott McBride.
4. This TRO request arises out of contract disputes between parties; which contract disputes include the GLA's governing Articles of Incorporation, Bylaws, Covenants, and Covenant addendum--Masterplan, and events that occurred in Emigrant, Park County and Bozeman, Gallatin County at the offices of GLA agent--Minnick Management.
5. Pursuant to Rule 4B, M.R.Civ. P. and §25-2-118 & 25-2-121 M.C.A., jurisdiction and Venue are proper in this Court.

#### BACKGROUND & AUTHORITY

6. Previously in 2011 as current GLA members, the O'Connells filed suit against the GLA Board of Directors alleging that the GLA Board violated many of its governing Articles, Bylaws and Covenants against its members. As of July 2012, one complaint is pending. Two complaints, one a GLA countersuit, were settled by O'Connells receiving all claims. New claims arose in September for which the O'Connells filed Writs of prohibition and mandamus (pending) against the GLA Board for abuse of its authority, violating more Bylaws, Covenants and Articles, and also entering into illegal contracts such as with Minnick; which contract thereby unlawfully transferred most GLA Boards powers and duties over to Minnick Management corporation.

For example, ¶ one of "Exhibit A" states the GLA "grants Minnick Management Inc. the exclusive right to operate, control, and manage [all members private] property

known as the Community of Glastonbury...:" for which contract provision is contrary to GLA Bylaw VI (A & B), "The business and affairs of the Association shall be managed by the Board of Directors" and "governed by the Board of Directors," not Minnick.

7. This October, the GLA Board again abused its authority and governing documents when it voted to charge its members with a new annual assessment for all guest houses (starting Jan. 2013). Also the GLA Board authorized Minnick to distribute GLA election ballots ("Exhibit C" mailed Oct. 11, 2012 to members) that states members can cast up to three votes per parcel (membership interest) instead of one allowable vote.
8. It is these two claims in ¶ 7 for which this TRO request is taken to be necessary to prevent irreparable harm and liability to the Association and GLA member finances, member elections and contractual rights per Covenants, Bylaws and Articles of Incorporation.
9. The GLA Defendants are required per GLA Article IV (E) "to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws;" Bylaw VI (B) (14) also requires Defendants 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 Covenants." GLA Article VIII allows liability for breach of duty & loyalty to members; which liability caused by GLA Defendants alleged herein, thus authorizes their restraint; & Covenant 11.03 "Each Landowner shall pay an assessment to the Association" not Minnick.
10. These restrictions and others (below) provide authority to restrain the GLA Board Defendants from further violating their own governing documents or contracts against

GLA members. Similar to this TRO request, the Montana Supreme Court ruling below gives further authority in the case, *Fox Farm Estates v. Kreisch*, 1997, as follows:

"An applicant seeking a preliminary injunction for a violation of a restrictive covenant must "establish a prima facie case, or show that it is at least doubtful whether or not he will suffer irreparable injury before his rights can be fully litigated." *Porter v. K & S Partnership* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839. Additionally, in determining whether an applicant has established a prima facie case, "the court should decide merely whether a sufficient case has been made out to warrant the preservation of the property or rights in status quo until trial, without expressing a final opinion as to such rights. An applicant need not make out such a case as would entitle him to final judgment on the merits." *Porter*, 627 P.2d at 840.

"This [Supreme] Court interprets restrictive covenants 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 also, "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."

Similar actions by the GLA should be retrained, because such language (underlined) below is not found in any of the GLA governing documents. Without the members authority, the GLA defendants illegally "enlarged" or "broadened" GLA Covenants and Bylaws by adding that which was not contained therein. Thus the GLA Board Defendants "extended by implication or enlarged by construction" and "broadened the covenants" and bylaws below by adding that which was not contained therein;" such as justifying new assessments by *construing Guest houses to be the same as "dwelling units;"* and construed Covenant 3.20 to mean *3 votes for each membership interest, for "three separate Board positions."*

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.

Like *Carelli* cited above, the language of the GLA Bylaws, Covenants or "agreement is clear and unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply [bylaw/covenant] language as written" & restrain that which was not contained therein.

### FACTUAL ALLEGATIONS

11. Plaintiffs will likely suffer irreparable injury by Defendants actions before Plaintiffs rights can be fully litigated and a hearing held thereon for such purpose. Thus courts authority cited above for this TRO is to "maintain the status quo" thereby restraining the Defendants violations of member rights under GLA Bylaws, Covenants, Articles, and statutes.
12. GLA member Petitioners will suffer irreparable harm by Defendant Directors actions before Plaintiffs' (member) rights can be fully litigated. This is because litigation takes time, so the GLA and agent (Minnick) will have collected thousands of dollars in unlawful guest house assessments, and much of the GLA Board business will have been conducted by Board Directors unlawfully elected using unauthorized election votes and practices.
13. This TRO request is necessary to prevent more liability and irreparable harm by Defendants against member elections, member monies, and even more liability arising from denial of members contractual rights per Covenants, Bylaws, and Articles. It's not possible to reverse all Director actions done as a result of their unlawful election to the GLA Board, and unnecessarily cost members thousands more in assessment monies.

14. It is also conceivable that many lawsuits will probably arise from each or every member having to pay unlawful guest house assessments, and from those denied election to the Board from current unlawful election/voting practices, causing further unnecessary and undue costs, burdens and liability upon the Association.
15. Thus this TRO request, pursuant to §27-19-203, is also to prevent a multiplicity of such proceedings which will probably arise out of Defendants actions, that can be prevented.
16. Until such time as Petitioner rights can be fully litigated and a hearing can be held thereon for such purpose, a Temporary Restraining Order is necessary to maintain the "status quo" thereby restrain the GLA Defendant and agent actions as follows:

#### **L TRO to Restrain Guest House Assessments**

17. On October 8, 2012, the GLA Board Defendants again abused their limited authority under governing documents when they voted to charge GLA members a new annual assessment for existing guest houses, starting on Jan. 1, 2013 approx. 2 months from this filing. As explained below, this guest house assessment is contrary to GLA Covenant 11.03(b), 3.12, Masterplan 6.0, & actions invoke Article VIII. for breach of duty and loyalty to members.
18. To prevent a multiplicity of monetary liability and lawsuits, it is necessary to restrain and thereby nullify all such GLA Board Defendants actions regarding the collection of new assessment charges upon member's guest houses; which assessments for the first time ever are due starting Jan. 1st, 2013 (in the amount of \$191 per guest house).
19. This guest house assessment is contrary to GLA Covenant 11.03(b). This covenant part b clearly is not for guest houses, but only allows "assessment[s] for each dwelling unit" as defined by the following GLA Covenant 3.12. "Dwelling Unit. A structure or portion of a

structure, normally consisting of living area, bathroom and cooking facilities, designed for occupancy by a single family."

20. A guest house is defined differently within GLA Covenant addendum-Masterplan 6.0 "A guest house is a separate structure owned by the Landowner intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet."
21. Furthermore, a guest house, "warehouse" or "auxiliary buildings" (allowed per Covenant 5.08) and "fallout shelter" (allowed per Covenant 6.06) similar to a dwelling unit may all have kitchens, bath and living quarters. But these other types of buildings are NOT the same as "dwelling units" that is "designed for occupancy by a single family."
22. So what distinguishes "dwelling units" as being different than "guest houses" "shelters" and "auxiliary buildings" is their intended design and intended use and size. The plain language of this covenants above clearly show a guest house is designed "for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet," which is smaller in size than a "dwelling unit" that can be any size "designed for occupancy by a single family" year round.
23. The plain language of the covenants above clearly shows that a guest house is not a dwelling unit. This fact is clearly distinguishable also in (Covenant addendum) Masterplan 1.1 "Maximum residential development for a subdivided parcel is limited to one (1) single-family residence and one (1) Guest House or in-residence guest apartment..." Therefore as contrary to these covenants above, the GLA Defendants should be restrained and thereby nullify their actions to charge its members new assessments for "guest houses."

## II. TRO to Restrain GLA Elections

24. This TRO is also to restrain corrupt GLA election practices & thereby nullify such corrupted election results. Most Directors named below have been reelected many times and very few new candidates get elected to the GLA Board, not because they are popular, but possibly due as a result of corrupt GLA election practices below.
25. Approx. 239 members/landowners in South and 223 members/landowners in North in good standing may run for a GLA Board in GLA annual elections. On Oct. 4, 2012, GLA's council and email stated, "The following directors have been on the Board for more than 6 years: Laura – 8 yrs, Janet – 10 yrs, Alyssa – 8 yrs, and William – 7 yrs." Rich Spallone, Sheridan Stenburg, Gerald Dubiel, and Richard Bolen have also been Directors 6 years; & total of 8 out of 12 Directors elected to the GLA Board for 6 or more years (2 year terms).
26. In October, the GLA Defendants authorized Minnick to distribute 2012 election ballots (see attached "Exhibit C"). These two GLA election ballots, one given to the O'Connells and another given to the Wallaces, in the top left hand corner both tell members to "vote for three" board candidates for each membership interest (total in the top right hand box).
27. The GLA members elect the GLA Board of Directors from among two voting classes- North and South Glastonbury landowners. GLA landowners/member votes are based on the number of parcels each member owns, called membership interests. This means each membership interest gets one vote. In 2011 GLA annual elections, there were 392 membership interests (parcels), or a total of 392 possible allowable votes per issue.
28. The total number of votes cast should be 392 if every membership interest voted. But "Exhibit B" shows that a total of 475 votes were cast for the 2011 GLA elections, or 221



votes cast from South Glastonbury and 254 votes cast from North. This 475 total votes is 82 more votes than all membership interests combined.

29. Since only about 40% (159) of the membership interest voted, how is this possible or allowed that 475 votes were cast? It is because the GLA ballots ("Exhibit C") told <sup>every</sup> ~~very~~ membership interest to cast three votes instead of one vote  $159 \times 3 = 475$ .
30. These 318 extra votes are explained in GLA's email from council Alanah Griffith ("Exhibit D"), that 'the three votes for each membership interest are for three separate Board positions.' The GLA council further states, "there are three board position available. Each position is a separate issue. Therefore, there are three votes to be made [per membership interest], one for position one, one for position two and one for position three."
31. However, the GLA Bylaws or Covenants do not contain this language as underlined above. Instead applicable bylaws are as follows (source: [http://gla-mt.org/legal\\_documents.html](http://gla-mt.org/legal_documents.html)):

GLA Bylaw VI(A), "the Board shall have an even number of positions available to be filled at election. Initially, this number shall be twelve (12). The actual number of Directors shall be those who have been nominated and elected to office from time to time as provided herein; however, the number of Directors shall not be reduced to fewer than four (4), nor increased to more than twelve (12). Of the twelve positions available on the Board of Directors, up to six positions shall be elected from Glastonbury North and up to six positions shall be elected from Glastonbury South, respectively, on separate ballots from among two separate groups of qualifying candidates."

GLA Bylaw V(B) further says for the first GLA elections held in 1997, "The three nominees from Glastonbury North and the three nominees from Glastonbury South, respectively, receiving the most votes shall be elected for terms of two years each and the [3] remaining nominees receiving the least votes from their respective areas shall be elected for terms of one year each."

GLA Bylaw V(B) also says "Thereafter, the Annual Meeting of the Association ... At such meeting there shall be elected, by the ballot of the Members, a Board of Directors in accordance with the requirements of Article V, paragraph F, and Article VI, paragraph D, of these Bylaws."

GLA Bylaw V(F) says, "For purposes of tabulating the written vote and consent of the Members of the Association, it is hereby provided that: 1. Each Membership Interest is entitled to one vote. 4. If the total number of qualifying votes equals or exceeds fifty-one percent (51%)

of the total Membership Interests of the Members in good standing who cast votes at the meeting, the vote shall be effective and shall have passed."

Also GLA Bylaw VI(D) says, "At the first Annual Meeting [1997], the Board of Directors shall be elected by the Members. The three nominees from Glastonbury North and the three nominees from Glastonbury South, respectively, receiving the most votes shall be elected for terms of two years each... Thereafter, at each subsequent Annual Meeting, Directors shall be elected for terms of two years to fill any open positions."

GLA Covenant 3.20 also states, "a separate and distinct Membership Interest ... is entitled to one (1) vote."

32. These bylaws and covenant (above) do NOT say, "Each position is a separate issue" or separate vote. These bylaws and covenant (above) do NOT say "there are three votes to be made [per membership interest], one [vote] for position one, one for position two and one for position three." as stated by GLA council ("Exhibit D"). To the contrary, Covenant 3.20 states, "a separate and distinct Membership Interest ... is entitled to one (1) vote."
33. The bylaws above detail how to conduct the first 1997 elections and subsequent elections. Despite the fact that 6 separate Board positions were available in 1997 for both North and South, it is inconceivable that each membership interest should vote 6 times for 6 different positions. There were six separate Board position to fill in the first GLA elections held 1997, and the above GLA Bylaws and Covenant 3.20 applied then and now, "a separate and distinct Membership Interest ... is entitled to one (1) vote" and only one vote.
34. Furthermore, Bylaw VI(A) above says, "the actual number of Directors shall be those who have been nominated AND elected to office from time to time as provided herein." In other words, if three Board candidates run for North and one vote is cast for each membership interest but only two candidates receive votes, then only 2 candidates are elected.
35. But the GLA Board has guaranteed their own Board position seat will never be eliminated since they guarantee that members can cast at least "one vote per position" thereby

allowing every position to get votes or every membership interest to cast "3 votes for 3 positions." This makes the GLA Board the de facto decider of how many Board candidates get elected. Which explains why 12 Board members always get elected as contrary to Bylaw VI(A) that says "the actual number of Directors shall be those who have been nominated and elected" and can be as few as "four" Directors on the Board.

36. Thus the GLA Board Defendants have acted contrary to Bylaws VI(A), V(B), V(F), VI(D) & Covenant 3.20 as NO such authority allows members to cast up to three votes per membership interest for 3 positions. GLA's email ("Exhibit D") proves this, making the TRO unnecessary to retrain GLA Defendants corrupt election voting practices of allowing up to 3 votes instead of 1 vote per member interest no matter how many position are available.

#### COUNT ONE-INJUNCTION:

37. The GLA Members incorporate by reference the preceding paragraphs as though fully set forth herein.
38. The GLA Board defendants continue to adamantly insist that they are entitled to charge members new assessments for guest houses in disregard for GLA Covenants 11.03(b), 3.12, and Masterplan 6.0. This is because a guest house is determined by intended design and use "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;" and not a dwelling unit intended "for occupancy by a single family."
39. This dispute will continue to hinder and harm members rights under governing documents until GLA Board Defendants are legally restrained from charging guest house assessments.
40. For and on behalf of all GLA members, the O'Connells seek a preliminary and permanent injunction, pursuant to Mont. Code Ann. § 27-19-101 et. seq., enjoining the GLA from

charging its members a new assessment for guest houses, and no assessments will be payable or given to Minnick as contrary to GLA duties per Covenant 11.03 and more.

**COUNT TWO-INJUNCTION:**

41. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.
42. The GLA Board defendants continue to adamantly insist that they are entitled to grant 3 votes for 3 Board positions per member interest in disregard for the Bylaws & Covenant 3.20, that says, "a separate and distinct Membership Interest ... is entitled to one (1) vote."
43. This dispute will continue to hinder fair elections and harm members rights under the governing documents until the GLA Board Defendants are legally restrained from conducting corrupted election voting practices.
44. For and on behalf of GLA members, O'Connells seek a preliminary and permanent injunction, pursuant to Mont. Code Ann. § 27-19-101 et. seq., enjoining the GLA from conducting further business (except for what is necessary and minimal) until new elections can be held as quickly as possible for all 12 Board positions using such bylaws for the (1997) first annual election; and one and only one vote is allowed per membership interest regardless of the number of positions for this and all GLA annual Board elections.

**COUNT-ONE Prayer For Relief**

Wherefore on behalf of members, the O'Connells respectfully request the following relief:

45. A preliminary injunction prohibiting the GLA Board and agents (Minnick) from charging its members a guest house assessment, and no assessments will be payable to Minnick, which will remain in effect during pendency of this TRO proceedings.

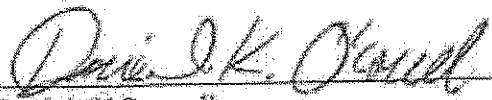
46. A permanent injunction prohibiting the GLA Board and agents (Minnick) from charging its members a guest house assessment, and no assessments will be payable to Minnick.
47. Any and other relief including costs which the Court deems equitable and just under the circumstances.

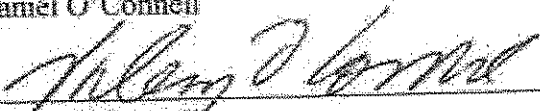
COUNT-TWO Prayer For Relief

Wherefore on behalf of members, the O'Connells respectfully request the following relief:

48. A preliminary injunction prohibiting the GLA Board and agents (Minnick) from conducting any and all business (other than what is absolutely necessary and minimal) until new elections can be held for all 12 GLA Board positions. As soon as possible, the current GLA Board are to hold new elections for all 12 Board positions using such bylaw method for the (1997) first annual election; and one and only one vote is allowed per membership interest regardless of the number of positions for this and all annual Board elections.
49. A permanent injunction prohibiting the GLA Board and agents from conducting anything other than open elections and results published to all members, showing proof of quorum, and number of votes each candidate received, and proof that only one vote was allowed per membership interest regardless of the number of positions for all annual Board elections.
50. Any other relief or costs which the Court deems equitable just under the circumstances.

DATED this 22nd day of October, 2012.

By:   
Daniel O'Connell

By:   
Valery O'Connell