

PARK COUNTY CLERK  
OF DISTRICT COURT  
JUNE LITTLE

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2012 DEC 28 PM 1 16

FILED  
BY SHEILA KIM  
DEPUTY

**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. )  
  
Plaintiff(s), )  
  
v. )  
  
Glastonbury Landowners Association, Inc. )  
Board of Directors )  
  
Defendant(s) )  
\_\_\_\_\_)

Cause No. DV-12- 220  
(formerly) Cause No. DV-12- 789C

**MOTION REPLY FOR DECLARATORY  
JUDGMENT & NOTICE TO JOIN TRO**

As GLA members, Plaintiffs-Daniel and Valery O'Connell, hereby submit this  
"MOTION REPLY FOR DECLARATORY JUDGMENT...." This motion is appropriate since the  
GLA Defendants failed to deny that this motion for declaratory "judgment will terminate the  
controversy or remove an uncertainty" regarding GLA contracts pursuant to §27-8-206, MCA.  
Further authority to grant this declaratory motion is pursuant to M.R.Civ.P., Title 27, chapter 8 *et*  
*seq.*, and also rule 57, M.R.Civ.P., rule 12(c) & rule 15(a)(2) cited herein.

Under these rules, Defendants objection to this motion are moot or non-issues, since  
complaint pleadings are complete regarding the unauthorized guest house assessment claim due  
to Defendants failure to give answer or otherwise defend against that claim and also failed to file  
a motion to dismiss that claim, and justice so requires a new/amended declaratory relief claim  
regarding GLA's unauthorized, continued election practices and more.

Defendants 3rd and final objection due to their requested need for more discovery is also moot, or a non-issue, because there is time for more discovery AFTER this declaratory motion is granted, as agreed to by Defendants "Response" brief on page 6 (conclusion) which said, "GLA asks this Court to continue Plaintiffs' Motion if it does not deny it so that discovery ... can be taken to establish essential facts." Plaintiffs also agree with this request for discovery AFTER the declaratory motion is granted and BEFORE the declaratory judgment is issued or a hearing is held thereon.

Thus the only issues to be decided are declaratory in nature, GLA Defendants readily admit to their actions (see GLA Nov. newsletter attached) that need to be restrained and construed by this enjoined declaratory relief TRO complaint for; "1. unauthorized/illegal GLA election practices since 2011-2012 & beyond, and 2. unauthorized assessment charges starting 2013 for the first time ever upon members' new and existing guest houses."

### **FACTUAL ARGUMENTS AND BRIEF**

#### **Background History:**

**On September 24, 2012**, GLA Members and Plaintiffs filed in Park County a pending Petition (DV-12-164) for Writs of Prohibition & Mandamus against GLA Board Defendants to prohibit GLA/Erickson contracts and GLA/Minnick contracts and mandate the GLA Board perform its GLA duties required by its governing contracts, after most of their GLA authority & duties were sold to Minnick to perform in violation of its GLA governing contracts with members. Soon after that filing, Ericksons abruptly cancelled all their contracts with the GLA, but in December 2012, the GLA partially amended and renewed their illegal Minnick contract.

**On October 22, 2012**, GLA Members and Plaintiffs filed in Gallatin County a pending Petition (DV-12-789C) for Temp. & Permanent Injunction against the GLA Corp. and Board of Directors to retrain, reverse and prevent a multiplicity of covenant, bylaw contract violations (see "Exhibit CD" CD format) regarding two issues 1. retrain unauthorized/illegal GLA election practices since 2011-2012 & beyond, and 2. restrain new assessment charges starting 2013 for the first time ever upon member guest houses.

**On Oct. 23, 2012**, TRO petition & summons served on the GLA Defendants by a process server.  
**On Nov. 6, 2012**, Defendants submitted 2 motions: 1. a venue change motion, 2. and a motion to dismiss only half of the petition regarding election practice/fraud for a false assumption that there is lack of status quo due to 16 years of using the same election practices or violations.

On Nov. 16, 2012, Plaintiffs submitted their "Reply to GLA's TRO motions" answer to GLA's venue change motion & answer to GLA's motion to dismiss 1/2 the TRO Petition (re: elections).

On Nov. 17, 2012 Defendants were serviced this Plaintiffs' motion reply.

Dec. 1st, 2012 (14 days after this service), was the deadline for GLA Plaintiffs to give final pleadings regarding their motion to dismiss. However, GLA Defendants failed to do so, and GLA's motion to dismiss is deemed denied 60 days from the date of filing (Nov. 7th); which is Jan. 7th, 2013.

On Nov. 26, 2012, Defendants submitted a change of council notice.

On Nov. 29, 2012, Defendants submitted their Reply brief for Venue change.

On Dec. 1, 2012, Plaintiffs submitted notice agreeing with venue change to Park County.

On Dec. 4, 2012, Plaintiffs filed a "Motion for Declaratory Judgment & Notice To Join TRO."

On Dec. 18, 2012, Hon. Judge Brown's Order granted venue change to Park County.

On Dec. 19, 2012, Defendants submitted their "Response to Plaintiffs' Motion For Declaratory Judgment & Notice To Join TRO;"

On Dec. 28, 2012, Plaintiffs submitted this reply to GLAs answer to the motion & joiner.

**27-8-201. Scope of power to render declaratory judgments.** Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

**GLA Defendants gave answer opposing members declaratory judgment motion for three reasons as follows, which objections, contrary §27-8-201, are moot or non-issues:**

**Objection #1:** On pages 1-3 of their answer to the declaratory motion, the GLA claims (per M.R.Civ.P., Rule 15) that Plaintiffs are required to amend their complaint in order to request this new motion for declaratory or "dispositive ruling, " or else this declaratory motion is deemed a summary judgment pursuant to M.R.C.P., Rule 12(c), MCA.; "**Motion for Judgment on the Pleadings.** After the pleadings are closed -- but early enough not to delay trial -- a party may move for judgment on the pleadings.")

Alternatively to this declaratory relief, Plaintiffs agree to this summary judgment relief.

Declaratory judgment is allowed also pursuant to rule 12(c), because the pleadings are closed regarding Plaintiffs' claim to construe and restrain GLA's new guest house assessments;

Per rule 12(c) above, complaint “pleadings are closed” regarding the guest house assessment claim due to Defendants failure to give answer or otherwise defend against that claim and also failed to file a motion to dismiss that claim. As clearly stated in the declaratory motion at ¶13, Defendants did not deny, “Defendants motion asked only that the election fraud claim be dismissed, but not the guest house assessment claim.”

Therefore since pleadings are closed for this undisputed claim, it is just and properly before this court to grant this declaratory relief to construe and restrain GLA’s unauthorized new guest house assessments.

And per rule 15(a)(2) as follows, declaratory relief is just and proper regarding Plaintiff’s claim to construe and restrain GLA’s unauthorized election practices;

Such authority is not under rule 15(a)(1) as Defendants claim. Authority for this declaratory relief claim is under rule 15(a)(2) which says, “ in all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.”

Since Defendants refused to consent to Plaintiff’s declaratory motion, justice so requires that the court grant this declaratory relief-new or amended claim regarding the election fraud issue because:

- \* rule 12(c) cited above already gives authority to grant this declaratory relief regarding the other claim against new guest house assessments, for which pleadings are closed;
- \* also Defendants pleadings & Nov. 2012 newsletter (attached) have already admitted to their actions regarding the guest house assessments claim and election practice claim.
- \* Thus the only issues to be decided are declaratory in nature wether or not GLA

covenants and bylaw contracts are absent such specific language or authority for such GLA's actions. More importantly, GLA pleadings do not deny that GLA contracts are absent such specific language or authority.

Plaintiff members' declaratory motion per rule 12(c) and per rule 15(a)(2) do justly allow this declaratory motion filed after pleadings were closed and as a new/amended claim that "the court should freely give leave when justice so requires" in this case.

**Objection #2:** On page 3 & page 5 of GLA's answer, the second reason stated against the declaratory motion is based on an error that "the declaratory judgment act's scope... [within §27-8-202] can not be used to determine whether or not a party is negligent" per GLA Art. VIII.

But Defendants again error here since the proper statute is §27-8-201, which does not bar negligent claims and states, " **Scope of power to render declaratory judgments.** Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree."

Also contrary to Defendants statement above, negligent means failing to take proper care in doing something; which is the same definition for breach of ones duty. Breach of duty is cited in GLA Article VIII. contract to be construed. This Art. VIII. states and allows for "liability of a director: 1. For a breach of the director's 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;" and more.

Thus pursuant to GLA Art. VIII. as requested, this declaratory judgment is to construe this contract portion wether or not Defendants were intentionally or negligently liable for breach

of their duty to the association and/or members regarding election fraud practices and new unauthorized assessments for new and existing guest houses, being forced on members.

**\*\*\*\*\* More importantly, Defendants unjustly deny this one motion claim for negligence, yet they utterly failed to deny nor defended against all the other declaratory motion claims for relief summarized on these pages;**

- page 1, “Plaintiffs motion prays for a hearing to prove declaratory relief and TRO relief are just and necessary to restrain, reverse and prevent a multiplicity of covenant, bylaw contract violations by the same Defendants, the GLA/Board of Directors. Authority for declaratory relief is found under rule 57 and M.C.A. Title 27, Chapter 8,…”
- page 2, “This declaratory relief motion is to construe rights cited in GLA contracts pursuant to 27-8-203” and “this motion is to obtain Plaintiff members’ declaration of contractual rights, status, or other legal relations cited thereunder the TRO/affidavit; thus necessarily enjoined to this motion. Also pursuant to §27-8-313, MCA., Plaintiffs pray the TRO/affidavit petition used in support of this declaratory motion also be granted as supplemental relief.”
- page 4, ¶ 7, “There are two issues in dispute for this motion and *prima facie* case. The enjoined TRO/affidavit statements of material facts supporting this motion both request to restrain and declare that Defendants’ historic 1) election practices 2) and new guest house assessments both exceed its contract authority, rewrite and/or misinterpret its contracts, violate its covenant/ bylaw contracts, and breach their duty to members and the Association pursuant to GLA Art. VIII.”
- page 5, ¶ 10-11, “Thus it is necessary to restrain, nullify, thereby prevent a multiplicity of more such unauthorized GLA election practices and also restrain new assessment charges upon member’s guest houses for the first time ever Jan. 1, 2013... These undisputed Defendant actions will no doubt continue unless restrained and found to be contractual violations.”
- page 6, ¶ 12 & 14, “the TRO is in support of this declaratory motion and [is] supplemental relief” “¶4, ¶10 & this quote at ¶11 of the TRO prays “to “maintain the status quo” [and for] thereby restraining the Defendants violations of member rights under GLA Bylaws, Covenants, Articles, and statutes,”
- page 7-8, claims summarized in the conclusion “to obtain all such declaration of rights, status, or other legal relations cited thereunder GLA contracts, and TRO/affidavit.”

Finally, the GLA Defendants “Response” brief did not give any specific pleadings against the TRO joiner motion supporting and supplemental relief to this declaratory motion. Justice so requires that Plaintiffs’ declaratory motion & claims for relief be granted by the court, also because the pleadings are closed regarding the undisputed guest house assessment claim.

**Regarding Defendants motion to strike so called “censure letter regarding Richard Bolen:”**

This letter in question attached to Defendants Dec. 19th "Response" brief is a letter that Richard Bolen himself wrote on Oct. 24th to all GLA members. This Bolen letter was explained simply as relevant evidence for venue pleadings showing a Bozeman address used in this GLA letterhead. There is absolutely no need to strike this Bolen letter evidence for venue pleadings which is now settled, and has nothing to do with this pending declaratory motion.

Plaintiffs yet counter and move the Court to strike Defendants Dec. 19th declaratory motion "Response" on page 6,, lines 7-18, which personally attacks O'Connells without cause or evidence by falsely claiming Bolen's letter was "presented to harass Mr. Bolen" "for the purpose of harassing and embarrassing Mr. Bolen" and false statement that "Plaintiffs emailed this letter to members of the GLA accusing Mr. Bolen of illegal and fraudulent conduct." This is absolutely ridiculous and false considering the fact that Bolen wrote and signed this letter and addressed his letter to all "GLA Members," after which the GLA Defendants mailed this letter to all members. By this letter, Bolen and the GLA Defendants are the ones that harassed and embarrassed O'Connells in that letter by accusing O'Connells on page 3 of being "another party with vindictive purpose." and giving this letter full of untruths to all their friends and neighbors as GLA members. Thus in the interest of justice, O'Connell as Plaintiffs request the Court Order the Defendants Dec. 19th declaratory motion "Response" on page 6, lines 7 through lines 18 be stricken from the record.

### CONCLUSION

On page 4 of Plaintiffs declaratory motion it states, "it is no surprise that the same Defendants for this fifth case historically and repeatedly have breach its contracts with members, and breach their duties per GLA Art. VIII., deny its members due process rights per GLA Bylaw XI., nor attempt to settle or mediate as Plaintiffs repeatedly request, nor seek any preventative

measures before litigation, resulting in this multiplicity of [litigation] injuries, liability, and enormous legal costs paid by the Association further harming members and Association.”

This cost saving and time saving declaratory relief is justified for the GLA Defendants repeated, unabated, and continued contract violations against its members.

This motion is also appropriate and Defendants objections are moot or non-issues, since Rule 12(c) and rule 15(a)(2) also allow this declaratory motion filed after pleadings were closed and as a new/amended claim that “the court should freely give leave when justice so requires.” Plus the fact that Defendants deny justice by denying one motion claim for negligence, yet they failed to deny nor defended against all other declaratory motion claims for relief cited above.

Also, the GLA Defendants failed to deny that this motion for declaratory “judgment will terminate the controversy or remove an uncertainty” regarding GLA contracts, as pursuant to **§27-8-206, MCA.**

Defendants 3rd and final motion objection due to their requested need for more discovery is also moot, or a non-issue, because there is time for more discovery AFTER this declaratory motion is granted, as agreed to by Defendants “Response” brief on page 6, “to continue Plaintiffs’ Motion” if discovery is allowed to continue AFTER the declaratory motion is granted and BEFORE the declaratory judgment is issued or a hearing is held thereon.

Again, the only issues to be decided are declaratory in nature as GLA Defendants readily admit to their actions (in Nov. newsletter attached); which two issues in the TRO complaint & declaratory motion need to be construed and retrained; “1. unauthorized/illegal GLA election practices since 2011-2012 & beyond, and 2. new assessment charges starting 2013 for the first time ever upon member guest houses.” Over all, as per **27-8-102, MCA**, the stated purpose of declaratory relief “is declared to be remedial; its purpose is to settle and to afford relief from



uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.”

Plaintiffs pray the court liberally grant, construe, and administer its remedial motion for declaratory relief (or alternatively summary relief), either of which will finally settle those particular GLA contract disputes.

DATED this 28th day of December, 2013.

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

**Certificate of Service**

We, Daniel & Val O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail on this same day to:

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

The GLA attorney of record:

Brown Law Firm  
Post Office Drawer 849  
Billings, Mt. 59103  
Valery O'Connell

By Daniel K. O'Connell  
Daniel O'Connell

By: Valery O'Connell  
Valery O'Connell

# Glastonbury Landowners Association

Newsletter & November 2012

## Annual Meeting & Elections Update

Despite snowy conditions, our November 10, 2012 Annual Meeting and Elections was well attended. Mimmick Management assisted in handling the many duties required to hold the meeting and run the elections, along with board members and numerous volunteers. We offer our sincere appreciation and thanks for all of their hard work and community spirit!

We welcome the following directors and ombudsmen who were elected to serve two-year terms on the Glastonbury Board of Directors, and one-year terms for Ombudsmen:

### North Glastonbury

Gerald Dubiel

Janet Naclerio

Sheridan Stenberg

### South Glastonbury

Alyssa Allen

Laura Boise

Rich Spallone

Specific voting results for directors are as follows:

Donna Andersen: 52

Gerald Dubiel: 64

Janet Naclerio: 62

Daniel O'Connell: 9

Valery O'Connell: 8

Sheridan Stenberg: 68

Bob Wallace: 1

Ron Wartman: 1

Alyssa Allen: 65

Laura Boise: 45

Tim Brockett: 31

Rich Spallone: 55

Ombudsmen elected are:

Miriam Barker: 52 (1 write-in received 1 vote for SG)

Hettie Wortelboer: 75 (no write-in votes for NG)

These volunteer positions are a way that landowners can participate in bettering our community, and we thank all who ran for election for being willing to serve.

Kenneth Haug, Paul Rantalo and William Smith from North Glastonbury; and Richard Bolen, Sean Halling and Scott McBride from South Glastonbury are completing the remainder of their two-year terms.

Officer and committee chair positions as well as the 2013 Board Meeting Schedule will be announced in our next newsletter.

Note: Each membership interest is allowed to cast one ballot whereby 3 unique candidates may be selected for each of the 3 director positions, and 1 candidate for the ombudsman position. Voting has been done this way since the GLA's inception, and is consistent with voting practices among many other corporations.

## Assessment Payment Policy

As mentioned in our July 2012 Newsletter, starting in January 2013, assessments are to be paid in the following manner in order to be in strict compliance with the Covenants:

✍

1) Paid in full by the end of January, or

2) Paid in equal quarterly payments by January 31, April 31, July 31, and October 31.

As stated in the Covenants, there is a 30-day grace period for payments, after which a 5 percent penalty and 1.5 percent monthly interest will begin to accrue.

To ensure that the timing of how assessments are to be paid is clear and the consequences when they are not paid, we have enclosed an assessment payment policy for your review.

## Guesthouse Assessment

The Covenants state that an assessment is charged for each division of land and for each dwelling unit (11.03), and the association has been charging assessments accordingly to the best of its ability.

Since guesthouses fulfill the description of a dwelling unit (3.12), and the Covenants do not base assessments on usage (nor is the association able to monitor such a thing), the board has determined that guesthouses are to be assessed as dwelling units. Landowners with guesthouses will see this reflected on their January 2013 statements.

## Phone Announcements for Meeting Schedule and Road Condition Information

Exciting news! We are now set up with our VoiceNation PBX Assistant service to provide timely road condition reports during snowstorms, as well as meeting date announcements for those who wish to call in.

If you are interested, simply dial the GLA's voicemail phone number: 406-451-0033, and press the appropriate extension to hear the announcement.

Road information will be provided with a separate extension for each of the three areas: North Glastonbury - Ext. 107; Lower South Glastonbury - Ext. 108; Upper South Glastonbury - Ext. 109. Meeting date information will be provided on Ext. 105.

Road conditions will be periodically reported during snowstorms by our snow removal employees and contractors as progress is made. Please do not call these people directly as this would become burdensome and distracting to them as they attempt to do their work. For future reference, you may cut off the bottom of this page and keep the phone and extension numbers handy.

Note: If you wish to receive monthly board meeting agendas and scheduling information via e-mail, please contact us with your name and e-mail address (which will be kept confidential).

GLASTONBURY VOICEMAIL ANNOUNCEMENTS: 406-451-0033

North Glastonbury Road Information: Ext. 107

Lower South Glastonbury Road Information: Ext. 108

Upper South Glastonbury Road Information: Ext. 109

Meeting Schedule Announcements: Ext. 105