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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-12-220
)	
Plaintiff(s),)	
)	AFFIDAVIT IN SUPPORT
v.)	SUMMARY JUDGMENT MOTION
)	REPLY & DISCOVERY
Glastonbury Landowners Association, Inc.)	
Board of Directors)	
)	
Defendant(s))	
_____)	

STATE OF MONTANA)
 :ss
County of Park)

Plaintiff(s) Daniel and Valery O'Connell, on our oath deposes and states to the best of our knowledge and belief, the information herein is true, correct, and complete, as follows:

- (a) We are GLA members/landowners residing at 56 Taurus Rd, both over the age of 18, and of sound mind to lawfully file this affidavit.
- (b) **GLA affidavit statements, being identical, are thus not independent accounts of matters.** O'Connells have personal knowledge of such matters herein especially after having attended most GLA meetings since 2007.
- (c) O'Connells pleadings and recorded meetings show they repeatedly try to resolve all issues before a last resort of legal action; which litigation is necessary to protect members private property rights and their personal investments bought with personal

sacrifices. O'Connells filed 4 lawsuits not 5 against the GLA. The GLA filed one lawsuit (countersuit-193) against O'Connells. This DV-11-193 case and countersuit were settled out of court with O'Connells receiving all claims for relief. The 114 case was delayed 16 months by a motion to dismiss which was reversed and is again pending. That leaves this case and the 164 Writ case that O'Connells motioned to enjoin.

- (d) O'Connells did not threaten to continue to sue "until the current board resigns." O'Connells asked for 8 Directors resignation (114 case) stating that **unless** they are removed or restrained they will continue to violate GLA governing documents necessitating more lawsuits. Obviously this statement 16 months ago was proven true as 3 more suits we filed since 2011 for this reason.
- (e) The only contractor that does GLA administrative functions is manager Alyssa Allen, possibly secretary Denise Orr Kirk; addressed in 114 case to stop Directors getting paid to do GLA functions since the Bylaws do not allow this. Admin. powers Allen exercises as a Director presents no issues, but Minnick as an agent given GLA authority/powers of the Board and Officers is contrary to Bylaw VI.B.(6) and more.
- (f) The attached CD shows that in 2003-4 the GLA had 370 memberships/parcels which has only increased by 23 in the last ten years to 393. Thus the growth, scope and complexity of GLA tasks have not changed hardly at all in 10 years. The GLA statement that only O'Connells objected to the Minnick contract is false, if taken in context to verbal complaints and this: the GLA refused to give members a copy of the Minnick contract and amended contract since Dec. 2012 and O'Connells only got a copy via a settlement agreement in the 193 case and for this case further hampering members from due process (Bylaw XI.C.) or objecting to that contract.
- (g) GLA affidavits ¶ 7 are false or misleading since most of these tasks are minor decision making tasks which Minnick does do or assist and ignores the bulk of duties in the Minnick contract. Minnick does almost all duties of the GLA since July 2012 and Minnick contract at ¶17-18 proves they were given GLA's "authority and

powers.” In fact, there is not much left for 12 “volunteer” GLA Board Directors to do after paying 3 Minnick employees (who manage 20 + HOA’s concurrently) to do all their GLA duties for them except for voting, and a few major decision making tasks.

- (h) GLA affidavits ¶ 8 & 9 are mostly false, based on conjecture, opinion and documents in dispute for the 114 case. 5 Board members refused approval of Erickson project review. 7 GLA majority approved it in violation of covenants, giving 6 variances to the Erickson project for 4 proposed Department store size buildings; clustering four huge 2 story wood sided buildings together 15-25 feet apart on WUI forest designated land contrary to all fire prevention and defensible space requirements, creating GLA liability and fire hazard according to Emigrant Fire chief; all these are materially detrimental to **adjacent** common land property owned by O’Connells and all members. Only 5 landowners contacted were bribed into agreeing to the Erickson project when promised their shared narrow dirt road would be widened and graveled in High South. Plus Ericksons “in-perpetuity” agreement “to never construct anything on their lot 90” is illegal, non-enforceable agreement in violation of existing GLA covenants that run with the land allowing a max. of 2 residences on lot 90.
- (i) GLA affidavits ¶ 10 are partially false: This clause allows 2 family residences on unsubdivided parcels (not larger parcels), thus Master plan 1.1 is misquoted or misunderstood by GLA President and Project Review manager which is a concern. The GLA usually do misquote and take governing documents out of context which is why they admit to “some confusion” about the guest house issue.
- (j) GLA affidavits ¶ 11 are partially false or misleading; NO concerns were raised before last fall about residence residing full time in guest houses, nor any action taken for covenant violations for “guest house,” “intended for occasional guest use” a term created in 2007 Masterplan adopted as part of the covenants. Before 2007, members could add residences if they fit on a parcel using 50 foot setbacks between them and the boundary lines. The GLA has never enforced covenant violations against any landowner ever, but instead opted to charge “guest house” assessments for the first time in 17 years possibly to avoid enforcement of this alleged covenant violation.

State of Montana)

ss.

County of _____)

Signed and sworn to before me on _____, 2013.

(SEAL)

Notary Public for the State of Montana

Residing at _____

My Commission Expires _____

- (k) GLA affidavits ¶ 12 are partially false or misleading; O'Connells in contact with members just getting their new bill oppose new guest house assessments, did not formally object due to O'Connells complaint addressing this issue. GLA businesses and employees, renters and guests all received snow removal and road maintenance for 17 years paid for only by landowners, not businesses and not employees, not renters, and not guests. This is factual proof that new guest house assessments have nothing at all to do with ensuring those benefits as GLA alleges, but posturing.
- (l) GLA affidavits ¶ 13-14: The following GLA language is nowhere within the GLA governing documents, yet GLA admits it solicited 'up to 3 votes for each membership' "for three separate vacancies," in violation of Covenant 3.20, which only allows "one vote per membership interest." The Board can not dole out member votes for electing themselves based on so called "vacancies," in violation of Covenant 3.20 AND Bylaw VI.A. that allows less than 12 Board seats and as few as 4 seats to be filled: which would seem to allow up to 8 so called "vacancies" on the Board.
- (m) GLA affidavits ¶ 15 are partially false or misleading; O'Connells removal 2 years ago and those election procedures to remove a GLA Director, have absolutely nothing to do with this suit for election procedures to elect Directors. Plaintiffs also filed suit 114 a full 3 months before the Board retaliated with his removal. O'Connells did not knowingly consent to such illegal election practices, but only recently discovered this with the help of a contract lawyer. In fact, O'Connells Nov. 4-6 email exhibits attached to this complaint states they only recently found out GLA election practice is in violation of its governing documents, specifically Covenant 3.20 & Bylaw VI.A.. This new issue, previously unknown for the 164 Writ case, necessitated this new suit.

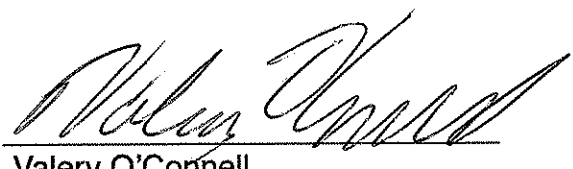
FURTHER AFFIANT SAYETH NAUGHT.

Dated February 24th, 2013.

Signed


Daniel O'Connell

Signed:


Valery O'Connell