# Plaintiffs Oral Summary (DV-12-164)



**Elections/votes-Issue #1** (Covenant 3.20, Bylaw V. F. and Bylaw VI.A.)

Defendants claim its members can not challenge past or future GLA elections simply because members "consented" to past election practices by casting ballots or election to the Board. This flawed argument would make a mockery of justice and of the rule of law to allow more than one vote per parcel, just because past violations were committed with alleged consent (& refund). **GLA Covenant 3.20** says, "a separate and distinct Membership Interest ... is entitled to one (1) vote." **Bylaw V. F.** ..."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; 2.** A Member may hold more than one Membership Interest and shall have a separate vote for each such interest;" It corrupts the Board elections to allow its members to cast 3 or 4 votes per parcel (shown in Exhibit J, 2007, 2004, 2003, 2002). Also each membership interest could potentially cast up to 3 votes for the same candidate. There are no safeguards in place to prevent a member to vote 3 times for the same candidate, or if they have 3 parcels, someone could cast 9 votes for the same candidate; which can further corrupt Board elections.

**Defendants summary judgment response admits,** "each membership interest cast up to 3 votes to fill three three separate vacancies" or "one vote per position." Nowhere does it say these words in the GLA covenants or bylaws. These words exists only in the minds of the Board, who extended by implication or enlarged by construction the meaning of Covenant 3.20 and Bylaw V. F. that allows only "**one** vote" "per parcel," not 3, and NO mention of vacancies. **The word "vacancy"** is not found anywhere in the covenants and only found within Bylaw VI., L. (part 6) not applicable except when a Director is removed from office or quits before his term expires, and in Bylaw X.E. for Ombudsman, also not applicable here.

* There is a voting entitlement that is applicable in state law within the Montana Nonprofit Corporation Act (MNCA) **35-2-536, MCA.** (1) "Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members..."

* The intent of voting entitlement is specifically expressed in GLA Bylaw VI.A., not based on vacancies, but on the will of its members. Bylaw VI., A. says the Board elections allow a maximum 12 positions and a minimum of 4 positions on the Board, which thus allows 8 vacancies or 8 positions on the Board to remain unfilled. This Bylaw VI.A. shows that since there is no requirement to fill every position on the Board, then each position on the Board can not be considered a separate matter or issue requiring a vote. Thus unfilled Board positions are not separate matters, are not separate votes, because unfilled Board positions are not required to be filled which is why up to 8 positions can remain vacant.

Plaintiff members thus seek summary judgment relief regarding this election issue for a preliminary and permanent injunction enjoining GLA Defendants actions which exceeded their authority limited by statute 35-2-536, & Covenant 3.20, Bylaw Vi.A, and Bylaw V. F. ..."For purposes of tabulating the written vote and consent of the Members of the Association" to not exceed one vote per parcel per election, excluding other matters such as a special assessment.

## Plaintiffs Oral Summary (DV-12-164)

Cov. 2.03-right to inspect

**Claim #2- new Guest house assessments.** (Covenant 11.03, & 3.12 Masterplan 1.1 & 6.0)

Until now, the GLA never charged guest house assessments in the 17 years they incorporated. GLA Board claim a guest house is the same as a dwelling unit then demanded its members pay assessments as of January for new and existing guest houses. This exceeds their authority limited by Covenants 11.03(b), 3.12, & Masterplan 1.1 & 6.0, due to the fact that a "guest house" is defined differently and treated different from a "dwelling unit." Defendants said they ignored the Masterplan. The following contract clauses taken together gives 2 different names, 2 different definitions and 4 different restrictions for a guest house as opposed to a "dwelling unit."

1. **GLA Covenant 3.12** (Pg. 6) defines "dwelling unit" as "a structure or portion of a structure, normally consisting of living area, bathroom and cooking facilities, designed for occupancy by a single family" The term includes a boarding house, ..." (NOTE: This covenant definition 3.12 by itself would seem to apply to dozens of GLA bomb shelters, and even guest houses, but for the fact that covenants, taken as a whole refute this.
2. **GLA Masterplan 6.0** (pg. 15) defines a guest house as "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;"
3. **Masterplan 1.1** (pg. 4) says, "a subdivided parcel is limited to one (1) single- family residence and one (1) Guest House or in-residence guest apartment per subdivided Tract or Lot. A guest house or guest apartment is only allowed on lots or tracts that are equal to or greater than the minimum lot size specified in the Residential Topographical Areas and Density Schedule (Section 3.5)... an Original undivided Parcel is limited to one (1) single-family residence and one (1) additional single residence ..."

* In this Masterplan 1.1, notice the term "single family" is found only within the the definition of dwelling unit (in Covenant 3.12) which defines dwelling unit, as "designed for occupancy by a single family." Hence a dwelling unit and single family residence are one and the same meaning or same intended use for a single family. Contrarily, a guest house is not a "family residence nor family dwelling unit, because it is limited by its size which can be no more than 1200 square feet, and a guest house is limited also for occasional guest use. Also Masterplan 1.1 says, a guest house is only allowed on a minimum lot size or bigger. Guest houses; 1. must be small 1,200 sq. ft. or less, 2. must be occasional guest use only, 3. must be restricted to min. size lots or tracts 4. nor allowed on undivided parcels; these 4 guest house restrictions don't apply to family "dwelling units." which are not restricted by lot size, not restricted by square feet, not restricted to occasional guest use, & allowed on undivided parcels.

* Guest houses; 1. must be small 1,200 sq. ft. or less, 2. must be occasional guest use only, 3. must be restricted to min. size lots or tracts 4. nor allowed on undivided parcels; 4 guest house restrictions don't apply to family "dwelling units." which are not restricted by lot size, not restricted by square feet, not restricted to occasional guest use, and IS allowed on undivided parcels. Thus a dwelling unit and guest house are not the same. Defendants contradicted a long-standing practice this year they charged members a new guest house assessment thereby ignoring the plain language of 4 contract clauses taken together, that gave 2 different names, 2 different definitions and 4 different restrictions for a "guest house" as opposed to a dwelling unit." or "single family residence." Plaintiff members therefore seek summary judgment regarding this issue enjoining Board **actions of charge assessments for new & existing guest houses which exceeded their authority limited by these 4 contract clauses taken together:** Covenant 11.03, Covenant 3.12 Masterplan 1.1 & Masterplan 6.0.

**Claim #3-GLA/Minnick Contract (DV-12-164)** (Art. IV E., Bylaw II. & VI.(I.) & VI.B.6)

* Referring to **35-2-118, MCA, Bylaw XII.A & Bylaw VI.B.(14),** the Board's response (Pg 9) says, **"the GLA Bylaws .... grant the board [broad] general powers without limiting them."** This lie is refuted by §35-2-414, MCA. part 2-3, and **GLA Articles IV. E.** that clearly says the GLA is "to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws ..." and **Bylaw II.C.** the GLA "shall be limited in the carrying out of its purposes, as may be provided in the said Covenants..." Thus bylaws & covenants both limit the Board's powers.
* The Plaintiff and members filed a separate complaint (DV-12-164) to oppose the GLA/Minnick contract because 1. the GLA Board exceeded their **limited** authority to give away most Board duties to so called agent Minnick 2. the GLA Board exceeded their **limited** authority to give away its Board powers AND authority to agent Minnick. Here's why:
* The board's powers are also limited by statute **35-2-414, MCA part (3)**, "...The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board... and the directors must be relieved from the duties and responsibilities to that extent." Notice this statute demands a board can not share it powers, only prescribe its powers only if its Articles allow. Accordingly the GLA can not share powers with anyone, nor give its powers to Minnick, because GLA Articles give authority and power only to the Board.
* Board Defendants admit they entered into a contract with Minnick Corporation which (pg.1) states, "The GLA hereby grants Minnick Management Inc. the authority and power to perform any and all lawful actions necessary for the accomplishment of services outlines below." This contract violates statue requirements in 35-2-414 since the Articles do not authorize the board to prescribe its powers and authority to anyone. Furthermore since Minnick is not a GLA committee, that Minnick contract is also contrary to GLA Bylaw VI (I) which says "**Only Committees of Directors** constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board of Directors..."
* GLA's response pg.12 said, 'the board can not give its authority and powers to Board committees' (as allowed), because then, "the GLA board would have to personally handle every task related to the GLA" and "could not hire a secretary, accountant, and plow operator" "making all provisions for contracts, employees and agents void." This is another lie, because **Bylaw VI/B. part 6** clearly allows limited duties "as necessary" for employees and agents. Bylaw VI.B(6) says, "except as otherwise provided in these Bylaws.... [the GLA shall] supervise and prescribe the duties ... **as necessary**, of all officers, agents, employees, or committee ...of the Association." Notice this prescribes Boards duties to an agent only "as necessary." The Minnick contract unnecessarily prescribed no less than 111 board duties to Minnick Corporation; evidenced by the GLA Board's own newsletter July 2012 that admits, "over the years, the Board has been handling the many administrative tasks necessary for operation of the association...." plus only 23 new memberships were added to the GLA in the last 9-10 years which belies the other excuse that GLA growth is why 12 board members can no longer do what 2 Minnick employees now do.
* Of these 111 board duties unnecessarily prescribed to Minnick, almost two dozen were officer duties which is also contrary to statute **§35-2-440, MCA,** and Bylaws VII.E thru H. that says in part, officers shall "perform such other duties as are incident to his office."
* These statutes, bylaws, & covenants are prima facia evidence that Minnick contract to abrogate its board authority, powers & 111 duties over to agent–Minnick thus exceeded GLAs authority.

**CONCLUSION:** The ordinary, popular, and plain language as written in GLA contracts & taken as a whole supports Plaintiffs Summary Judgment motion. The GLA failed to so apply the language as written therein its own governing contracts. Even worse and at the heart of all GLA contract issues, the GLA obviously added language not written, extended by implication or enlarged by construction the meaning to its governing documents, as contrary to these and contract law The court need only agree that the GLA Defendants governing documents are absent any specific language or lack authority, thus **1.** do not allow guest house assessments, **2.** do not allow 3 votes per membership interest per Board election, and **3.** do not allow the GLA to abrogate and sell its powers and duties over to another corporation -Minnick Management Corp..

**Erickson contract/agreements (DV-12-164)**: (Covenant 12.01 and Masterplan 4.0-4.2)

* This issue was **NOT** part of this complaint nor Plaintiffs summary judgment motion, as there are yet material facts still in dispute. The table of authorities pg.1 cites the Supreme Court that applies here; whether or not a party materially breached a contract is a material question of fact. For instance, the 2 Erickson contracts in dispute within Exhibit I. submitted by the GLA are not signed contracts. Without signed contracts there can be no breach of contract. Thus, wether or not signed contracts exist is a material fact in dispute. Also, the GLA (Bolen) letter (attached to Defendants Motion to Strike) which claimed the Ericksons had revoked all variance agreements with the GLA which brings into question other agreements. Now Defendants counter-motion for summary judgment pre-maturely included the agreements that were absent signatures.
* None the less, Defendants attack on O'Connells character or motive to claim this issue was "to vex the GLA and exercise power" is a ridiculous lie considering the fact that Plaintiffs are partial owners of the common land property adjacent to the Ericksons; for which Erickson variance includes eliminating setback requirements for **four** huge 10, 000 square feet department store size buildings, wood sided within forested area and clustered a few feet apart (obvious fire hazard and eye sore), as would negatively impact their unspoiled residential aspect of their adjacent property, injurious to the property and community, and unnecessarily include 6 variances total (since the Ericksons can subdivide their property as an alternative to the 6 variances, making them unnecessary); thus the Erickson variances are contrary to Covenant 12.01 and Masterplan 4.0-4.2.
* Also since the common owned property adjacent to the Ericksons was owned by all GLA members this would require under the rules that all GLA member landowners to be contacted regarding Erickson's 6 major variance requests. The GLA Board refused to contact all its members, but only contacted 5 adjacent landowners. Again, the Ericksons can subdivide their property as an alternative to the 6 variances, making them unnecessary. The Erickson variance documents appears to be an illegal attempt to evade the Montana Subdivision and Platting Act (MSPA), thereby evading the need to subdivide property in order to erecting 4 buildings on one un-subdivided parcel instead of a limit of 2 buildings on one un-subdivided parcel as required per GLA Masterplan 1.1.
* Contrary to Defendants pleadings, the Erickson road improvement agreements have nothing to do with this complaint claim what so ever, and have no barring on the 2 unsigned Erickson agreements in dispute.
* These and other issues of material facts are unsettled as to wether or not the Erickson variance agreements were signed and still exist, or amended, or resurrected. Plaintiffs thus request such discovery before the court considers this issue.
* Therefore it is premature for Defendants to demand summary judgment against this claim for these outstanding material facts in dispute, and even more absurd for Defendants (at pg.14) to demand this court enter an Order "finding that the [unsigned] variance agreement is valid."

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