

1 Michael P. Heringer
2 Seth M. Cunningham
3 BROWN LAW FIRM, P.C.
4 315 North 24th Street
5 P.O. Drawer 849
6 Billings, MT 59103-0849
7 Tel (406) 248-2611
8 Fax (406) 248-3128
9 *Attorneys for Defendants*
10 *Glastonbury Landowners*
11 *Association, Inc.*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL and VALERY O'CONNELL (for and
on behalf of GLA landowners),

Plaintiffs,

v.

GLASTONBURY LANDOWNERS
ASSOCIATION, INC. Board of Directors,

Defendants.

Cause No.: DV-2012-220
DV-2012-164
Judge Brenda R. Gilbert

**DEFENDANTS' RESPONSE TO
"PLAINTIFFS' ORAL SUMMARY" AND
"TABLE OF AUTHORITIES & NOTES"**

COME NOW the above named Defendants Glastonbury Landowners Association, Inc. Board of Directors (GLA) and submit this response to "Plaintiffs' Oral Summary" and "Table of Authorities & Notes." At oral arguments for cross-motions for summary judgment on June 5, 2013, Plaintiffs submitted a document titled "Table of Authorities & Notes (DV-12-164). They also filed "Plaintiffs' Oral Summary (DV-12-164)." These documents raise new arguments under constitute additional briefing and raise arguments not raised in the initial briefs.

Specifically, Plaintiffs cite to Mont. Code Ann. § 35-2-414 which states:"

(1)Each corporation must have a board of directors.

(2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board.

(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. To the extent authorized, a person authorized under

1 this subsection has the duties and responsibilities of the directors and the directors must be
2 relieved from the duties and responsibilities to that extent.

3 Plaintiffs claimed this statute relieved the GLA board from its duties and responsibilities because it
4 supposedly abrogated them to Minnick Management. They also argue the GLA Articles of
5 Incorporation do not allow the Minnick contract. Plaintiffs repeat the argument the GLA board gave
6 away its powers and authority to its agent.

7 That isn't the case. The statute states "all corporate powers are exercised by or under the
8 authority of the board." The language "under the authority" shows the statute allows agents and
9 employees of a board to carry out the directions given to it by the board. A proposition also supported
10 by the general powers granted a nonprofit corporation under Mont. Code Ann. § 35-2-118. Further,
11 GLA's Articles of Incorporation, Art. IV states:
12

13 In furtherance of its purpose, but not otherwise, the Corporation shall have the power to have to
14 exercise any and all powers, rights and privileges which a corporation organized under the
15 Nonprofit Corporation Law of the State of Montana by law may now or hereafter have or exercise,
including, but not limited to, the following:

16 ***

17 C. To enter into, make, perform, or enforce contracts of every kind and description, and
18 to do all other acts necessary, appropriate, or advisable in carrying out any purpose or
19 power of the Association, with or in association with any person, firm, association,
corporation or other entity or agency, public or private;

20 The GLA's Articles specifically grant it all the statutory powers in addition to other broad powers.

21 Those powers allow it to enter into contracts and to appoint agents.

22 Plaintiffs are correct in that the GLA Articles do not authorize anyone other than the board to
23 exercise its powers. However, that does not take away the GLA's ability to appoint agents to act on its
24 behalf. Thus, subsection (3) of Mont. Code Ann. § 35-2-414 does not relieve the board of any powers
25 because the board did not "give away" its powers. The Minnick contract is action taken by the board
26 under its broad powers found necessary, appropriate, and advisable in carrying out the purpose and
27
28

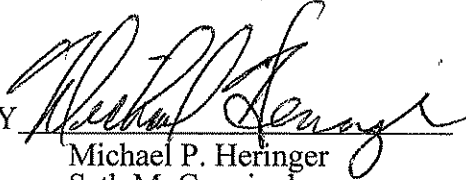
1 power of the GLA. Minnick, as the GLA's agent, carries out its assigned tasks under the authority of the
2 board and not in place of the board.

3 Plaintiffs misconstrue agency law, and make the incorrect argument that by appointing an agent
4 and allowing the agent to act on its behalf, the GLA has abrogated its powers and responsibilities. That
5 is simply not the case, the GLA as the principal maintains the authority over its agent, and its agent only
6 has the power which the GLA confers. Mont. Code Ann. § 28-10-401. Further, an agent may be
7 authorized to perform any acts the principal may do. Mont. Code Ann. § 28-10-05. Plaintiffs' argument
8 that the GLA board is bound to personally handle every task has no support within the GLA governing
9 documents. In fact the opposite is true; the GLA governing documents clearly give the GLA authority to
10 contract, hire employees, and appoint agents. See Bylaws, Art. VI.B.6. Plaintiffs ignore these express
11 provisions and try to insert limitations that are not there.
12
13

14 The GLA has always acted under and through the powers and responsibilities imposed on it by
15 its governing documents and Montana law. Plaintiffs' personal opinions to the contrary are not grounds
16 for overturning the decisions of the elected board.
17

18 DATED this 17th day of June, 2013.

19 BROWN LAW FIRM, P.C.

20
21 BY 
22 Michael P. Heringer
23 Seth M. Cunningham
24 Attorneys for Glastonbury
25 Landowners Association, Inc.
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 12th day of June, 2013:

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
Plaintiffs pro se

Daniel and Valery O'Connell
PO Box 774
Cayucos, CA 93430
Plaintiffs pro se

By: 
Michael P. Heringer
Seth M. Cunningham