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IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA 13-0439

Daniel and Valery O'Connell,  
PRO SE Plaintiffs and Appellants,

V.

Glastonbury Landowners Association, Inc., Board of Directors  
Defendants and Appellees

On Appeal from the District Court of the Sixth Judicial District  
Hon. Judge Brenda Gilbert

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APPELLANTS' REPLY BRIEF

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STATEMENT OF THE CASE

GLA's Answer misrepresents the issues on appeal, and did not answer O'Connells Appeal Brief until pp. 19. GLA's Answer pp. 9-19 were instead copy pasted from GLA's Summary Motion (pp. 2-9). GLA's Answer also makes new claims not made in the lower court, including (pp. 7-8), "the vast majority of members obviously approve of the boards actions." On the contrary, lawsuit DV-12-220 "Exhibit B," election results show 65% of "the vast majority of members" do NOT support any board or candidate, as only 35% (158 out of 400) bother to vote in GLA elections; which members are told to cast 3 votes each.

GLA's Answer pp. 7, 8 should be stricken from the record as these pages also contain several rumors and vexatious character attacks against O'Connells' person & motives, all emphatically denied hereby, along with GLA's misrepresentations of the record & facts (cited in #1-15 below). As contrary to GLA's character attacks against O'Connells, Daniel was still on the Board when his first complaint was filed June 2011, proving this lawsuit had nothing to do with losing the 2011 election. But as a last resort, legal action was necessary in all cases to hold GLA Board accountable for new and repeated abuses of their limited authority, civil and constitutional law violations against members private property & rights, as witnessed by Daniel while on the Board. After the June 2011 lawsuit was filed, some Board Directors retaliated by soliciting a petition to remove Daniel

by falsely telling members his removal would help defeat his lawsuit. To prevent his re-election to the Board, GLA then mailed letters to all members assassinating O'Connells' character & motives with the same allegations as before this court.

GLA's Answer does not deny the fact that District Court's Orders violate O'Connells' right to due process of law under U.S. Constitution (14th amendment) for granting summary judgment, without first affording O'Connells' a hearing & discovery to settle material facts still in dispute; which claim is now undisputed.

GLA's "Statement of Facts" also misrepresents the record and facts in 4 complaints (there are not 5) against the GLA regarding GLA Board's misappropriation of thousands of dollars in assessment monies (per Covenant 8.01); & refusal to give members "receipts and expenditures" (per Bylaw VI (L)); & refusal to give members required meeting minutes; & refusal to take required committee minutes; & violations of the settlement agreement; & violation of Bylaws & Article III by paying Board members for board duties, and numerous other covenant/bylaw violations in these two cases.

The record shows the GLA has never admitted to any mistakes ever, but instead blame O'Connells for 'misconstruing law and the governing documents.' This is absurd considering GLA's Answer did not defend any issues on appeal without misrepresenting facts in the record & adding language not written therein

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that extended by implication or enlarged by construction the meaning within applicable GLA governing contracts.

### SUMMARY & REPLY BRIEF

At stake in this matter is O'Connells' private property rights & constitutional due process rights for denial of hearing & discovery, and member claims showing the GLA ignored material laws, and exceeded their authority & power under restrictive GLA covenants, bylaws, & articles of incorporation.

It's essential that an association follow its own governing contracts and for courts to intervene in cases like this one when this Board's actions violate members property rights & contracts for the election issue, guest house assessment issue, Erickson issue, and Minnick issue. This Court's holding and rationale under contract law is the basis for all complaints demanding this board's compliance with governing documents relating to voting rules, due process & notices, enforce procedures, fiduciary duties, and more substantive requirements.

All Orders err especially June 19th Orders mostly copy pasted from GLA's summary motion, thereby repeating GLAs mistakes, misconstruction & misinterpretation of covenant/bylaw contracts, failed to give consideration of relevant law & facts in dispute, and dismissed all complaints claims & material facts in dispute without hearing & discovery. Orders also denied all authorities

listed in DKT. 39 that challenge GLA's abuses of authority under the governing contracts, CC&R enforcement, interpretation, maintenance, budgeting, disclosures, elections – in short, the whole gamut of GLA operations in dispute.

**1. GLA's Answer Brief p. 21 misrepresents the facts & record to claim:**  
O'Connells "failed to show with Affidavit ... facts essential to justify their opposition and completely failed to refute the factual assertions within the Affidavits of Richard Bolen and Alyssa Allen (Exhibits D & E)."

On the contrary, O'Connells DID file Affidavit (DKT. 25) in the lower court (as follows) that factually refutes GLA's Answer pp. 9-19, & Summary motion & all assertions in Bolen/Allen Affidavits that are "identical, not independent accounts of matters:"

O'Connells' Affidavit ¶ c refutes Bolen/Allen Affidavits ¶ 3, & Answer pp. 9-10

O'Connells' Affidavit ¶ d refutes Bolen/Allen Affidavits ¶ 4, & Answer p. 10

O'Connells' Affidavit ¶ e refutes Bolen/Allen Affidavits ¶ 5, & Answer pp. 9-10,

O'Connells' Affidavit ¶ f refutes Bolen/Allen Affidavits ¶ 6, & Answer pp. 17-18

O'Connells' Affidavit ¶ g refutes Bolen/Allen Affidavits ¶ 7, & Answer pp. 17-18

O'Connells' Affidavit ¶ h refutes Bolen/Allen Affidavits ¶ 8 & 9 & Answer pp. 11-13

O'Connells' Affidavit ¶ i refutes Bolen/Allen Affidavits ¶ 10, & Answer p. 14

O'Connells' Affidavit ¶ j refutes Bolen/Allen Affidavits ¶ 11, & Answer p. 14

O'Connells' Affidavit ¶ k refutes Bolen/Allen Affidavits ¶ 12, & Answer p. 14

O'Connells' Affidavit ¶ l refutes Bolen/Allen Affidavit ¶ 13-14 & Answer pp. 15-16

O'Connells' Affidavit ¶ m refutes Bolen/Allen Affidavit ¶ 15 & Answer p. 16

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GLA's statement above denying all these Affidavit pleadings, thus misrepresents the record and facts. More importantly, the lower court apparently didn't see or read O'Connell's Affidavit & Reply Brief showing facts in dispute opposing GLA's Summary motion.

2. GLA's Answer Brief (pp. 22) misrepresents the facts & record to claim: "O'Connell also argue new claims here not raised in their initial pleadings such as breach of contract, tortious interference, and abuse of authority against the GLA Directors..."

a. On the contrary, O'Connell's pleadings DID cite "breach of contract, tortious interference, and abuse of authority" claims. For "breach of contract claims, also called "contract violation" claims are within: DV-12-164 Writ complaint pp. 5; DV-12-220 TRO complaint pp. 3, 6; O'Connell's Summary Motion Reply pp. 10, 13, 14; Summary Motion pp. 3, 12, 14; Rule 59& 60 Motion pp. 4, 5, 6, 8; and Oral Arguments pp. 3, 4, 5.

"Oral Arguments" transcript p. 3 also stated: "Whether a party breached a contract is a question of fact, & that is in dispute. [*Sjoberg v. Kravik* (1988)] What we're here to determine is the construction & interpretation of the agreements in question, which is a question of law according to *Dantes v. Knight*."

b. Appeal Brief said, "GLA's actions were tortious as cited in the complaints for breach of duty & contract violation." The record also shows DV-12-164 Complaint (pp. 15) pleading DID cite GLA's tortious interference:

"GLA defendant Directors were personally involved in the termination of their own duties to members and entering into a Contract with Minnick and Ericksons

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and thus Petitioners argue this conduct was tortious based on: (1) the fact the GLA Board defendants ratified a decision to wait until the contracts had been signed to inform members, (2) but did not inform members of their intent to give most of the GLA duties over to Minnick..." and more.

e. The record also shows O'Connells' DID cite GLA Directors abuse of authority within: DV-12-164 Writ complaint pp. 3-4; DV-12-220 TRO Complaint pp. 2,3,4, 6, 11, 12; O'Connells Summary Motion Reply pp. 8, 9, 10; O'Connells Summary Motion pp. 1, 5, 7, 9, 10, 12.

3. GLA's Answer Brief p. 21 misrepresents the facts and record to claim: "O'Connells [Summary Motion] asked for discovery in the alternative." "and delayed discovery for 9 months."

On the contrary, O'Connells' Reply brief asked three times for a "hearing and discovery for both DV-12-164 & DV-12-220" & Discovery was delayed for complaint change of venue, joinder motion to join cases to cut costs, & by Bolen's claim that Ericksons variance & documents were withdrawn that later surfaced in GLA's summary motion, thereby Reply brief p. 13 said, "Plaintiffs request a hearing & discovery before the court considers the issue..." NOT as an "alternative" request.

4. Answer Brief p. 22 misrepresents the facts and record to claim: "District Court held a hearing where the O'Connells were given a full opportunity to argue their case."

The record shows this is an absurd statement, because April 16th Orders (O'Connell Brief Appendix II) granted "Oral Arguments" & "Each side shall be



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limited to one-half (1/2) hour total in which to present arguments on the three motions." 30 minutes is NOT "a full opportunity to argue" 3 motions, 4 issues, a dozen claims, nor time to rebut Defendants oral arguments, nor to call witnesses.

5. Answer Brief p. 22 misrepresents the facts and record to claim: "There is no evidence the District Court did not read O'Connells filings [Affidavit & Reply Brief]"

On the contrary, June 19th Orders (p. 2) found "no material facts in dispute" & "Plaintiffs failed to file a reply brief" & "no party requested hearing or discovery." This is factual evidence the lower court did NOT see or read O'Connells "Reply Brief" & Affidavit that DID cite material facts in dispute & did request "hearing & discovery" (Reply Brief pp. 1, 10, & 13); for which O'Connells summary motion sought to settle only 3 questions of law & 3 facts leaving at least 8 facts in dispute (cited in Rule 60 motion).

6. Answer Brief p. 23 misrepresents the facts and record to claim: "District Court Orders ... summarize the arguments made by Plaintiffs in the brief and at the hearing..."

Orders did NOT summarize O'Connells Brief, Reply Brief nor "Oral Arguments" & 30 minutes wasn't sufficient to rebut GLA. Orders were mostly copy pasted from Defendants cross-motion for summary judgment thus written by the GLA BEFORE O'Connells filed a reply brief.

7. Answer Brief p. 24 misrepresents the facts and record to claim: "GLA discussed the [Erickson] proposal .... and solicited input from other landowners" & "variances were not "materially detrimental ..." to members property.

On the contrary, O'Connells appeal & Affidavit ¶ h said "only 5 landowners were contacted" regarding the Erickson project review and 6 variances. And at no time did GLA Board discuss Erickson "Finding of Facts" much less "solicit" input from landowners that own the adjacent common land, thus denied landowners "notice" & due process as required per Bylaw XI(C).

O'Connells Affidavit ¶ h also stated Ericksons 6 variances, "are materially detrimental to adjacent common land property owned by O'Connells & all members," including a "violation of existing GLA covenants that run with the land..." & Erickson's so called "in-perpetuity" agreement violates MT. constitution against in-perpetuity contracts, and more thus Not "for the benefit of Landowners" (per Covenant 11.02). Orders fail to show Erickson's six variances were "necessary" & "not injurious" per Covenant 12.01; for which Erickson "Finding of Facts" (not seen by members) show variances were to "reduce cuts and fills" as a monetary reason, not a "necessary" reason.

8. Answer Brief p. 25 misrepresents the facts and record to claim: O'Connells "objection [to Erickson variances] was simply an objection for sake of objection" & pp. 26 such "disagreement" "is not grounds for judicial administration of the GLA."

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On the contrary, O'Connell pleadings show serious violations of the Platting Act, contract law, governing documents, & member rights for which Orders stated:

June 19th Orders (pp. 4) found the variances required Ericksons "the owners of lot 90 and 91 will not be able to build on lot [90] & that both lots 90 & 91 must be always sold together in the future..."

These Orders provide the legal basis for invalidating the Erickson issue found in "Oral Arguments" & Rule 60 motion:

"There is no evidence of property joinder ... & "Exhibit B" of the GLA Covenants shows Erickson lots 90 & 91 were legally subdivided lots.... Erickson contracts & variance to deny building on lot 90 attempts to subvert the Platting Act to illegally join the lots & subvert covenants that run with the land. Covenants 5.06, 5.08, 5.10, 6.01 allow building on lot 90; which right, under the express language of GLA covenant contracts, ran with this land. So there can be no Erickson variance & agreement that deny building on lot 90 without consideration given to all GLA landowners & the required vote of 51% of members to change covenants on lot 90, per Covenant 2.4 ..."

AFTER O'Connells complaint was filed, Bolen's Affidavit/Answer claimed Ericksons "withdrew their variance request" & agreement. O'Connells rightfully did not include the Erickson variance claims in their summary motion, for facts in dispute & need for discovery.

9. Answer Brief p. 27-28 misrepresents the facts and record to claim: "The Board determining guest houses were dwelling units" "designed for occupancy by a single family" and Orders (p. 6) finding "this was a straightforward interpretation of the Covenants" "comports with the ordinary and popular sense of the words" therein Covenant 3.12.

On the contrary, the lower court had NO authority to interpret the covenants & lower court's reliance on Bylaw XII(A) is in err, because this bylaw does NOT allow any Covenant interpretation, nor does contract law absent ambiguity:

"The language will govern the covenant's interpretation when the words are plain & unambiguous." *Gosney v. Big Sky Owners Ass.* (1983), 205 Mont. at 227, 666 P. 2d at 1250. "Courts have no authority to insert or delete provisions of a contract where the contract's provisions are unambiguous." *Topco, Inc. v. State* (1996) citing *Jarrett v. Valley Park, Inc.* "...that the district court could not 'broaden' the covenant by adding a limitation not contained therein." Orders did exactly that:

Orders (Exhibit A pp. 5-6) admit they did interpret or "construe" the covenants absent any finding of ambiguity, such as Covenant/Masterplan 6.0, & inserted language ("designed for ... a single family") into the definition of a guest house, thereby broadened & misinterpret covenant meaning. Orders thus denied strict interpretation of Covenant/Masterplan 6.0 because a guest house is NOT "designed for ...a single family:"

GLA Covenant/Masterplan 6.0, 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."

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...includes a boarding house but not the individual living rooms.."

GLA & Orders failing to give this guest house definition proves this matter, since a "guest house" & "dwelling unit" are two very different definitions. A "single family" dwelling unit or boarding house are larger than a guest house 1200

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sq. ft. limitation; and a dwelling unit has a permanent residence for family or owner; & EXCLUDES non-permanent residences or "individual rooms" in a boarding house; so a "dwelling unit" has no restriction for size or time of occupancy, unlike a guest house limiting size & time of occupancy for "occasional use not as a permanent residence." Masterplan 6.0 also shows a guest house is treated differently from a dwelling unit; for which the lower court ignored ordinary, popular, and plain language as written in these covenants factually proving a guest house is NOT "designed for ...a single family" thus is not a dwelling unit. Instead Orders interpreting "a guest house" with size & occasional use restrictions "as the same as a dwelling unit" is an absurdity & renders Masterplan 1.1 & 6.0 meaningless.

10. Answer Brief p. 29 misrepresents the facts and record and makes new arguments not found in the lower court to claim: "The term "guest house had never been used until the adoption of the Masterplan in 2007. Until then, lots with multiple dwelling units have been assessed multiple dwelling unit assessments."

On the contrary, this is a new argument on appeal, not allowed & false. GLA didn't deny O'Connells Brief pp. 10 & 31 showing guest houses were around since 1997 & Bolen's Affidavit ¶ 11 said "guest houses are rented ...as vacation rentals." & Covenant 6.01 "Prior to beginning construction of any structure," GLA approved vacation rental guest houses for 17 years as "auxiliary buildings:"

Covenant 5.08. "Nothing stated herein shall prevent a Landowner from carrying on cottage industries, home occupations, home businesses, professions .... located in a Landowner's dwelling or auxiliary buildings..."

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5.08 adopted 1997 allowed guest houses for vacation rental businesses for 17 years & GLA failed to charge them assessments. Covenant 5.09 also allowed "structures & buildings" like a guest house for "charitable activity" for guests to stay for free, or as a vacation rental (per 5.08). Masterplan 6.0 adopted 2007 sought to limit these structures, habitations, & auxiliary buildings used as guest houses since 1997. MasterPlan 6.0 "guest house" definition adopted 2007 does not change O'Connells claim that, 'GLA failed for 17 years to charge assessments for existing guest houses for businesses, bomb shelters, churches, & schools that all contain living areas, bathroom, cooking facilities.' (O'Connell Affidavit ¶aa). The GLA did NOT refute this Affidavit in lower court & can't do so on appeal.

11. Answer Brief p. 29 misrepresents the facts and record to claim: "that a dwelling unit exists on the lot is all that is required to assess it," thereby "assessing guest houses as dwelling units..."

GLA Answer p. 30 admits "certainly the reverse may not be true" that a dwelling unit may not be a guest house. GLA & Orders yet deny that Covenant 3.12 IS a particular type of dwelling "designed for occupancy by a single family;" which contract language EXCLUDES guest houses, "intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet" per Masterplan 6.0.

GLA's Answer (pp. 13 & 27) also failed to refute O'Connells' pleadings & Brief pp. 25 citing Covenant 11.03(d) that prohibits guest house assessments

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totaling \$191 (a 100% increase in assessments). This covenant restriction prohibits the new \$191 guest house assessment, because it exceeds the annual 10% limitation on assessment increases per covenant 11.03(d). Orders in err fail to apply this Covenant restriction 11.03(d) & failed to apply contract law showing guest house assessments are untimely after 17 years per statute §27-2-202, MCA-8 year contract claim deadline. O'Connell pleadings and appeal cite this law applicable for the fact that GLA's guest house assessment claim was made 17 years AFTER ratification of Covenants 3.12 ("dwelling unit") & Covenant 11.03 ("assessments"). Orders thus arbitrarily & capriciously deny members rights & numerous covenants/bylaws & statute of limitation that all legally prohibit guest house assessments after 17 years.

11. Answer Brief (pp. 30) misrepresents the facts and record to claim: "There are six vacancies on the GLA Board each year..." "Bylaws do not have specific election procedures" per Bylaw XII(A) GLA "interpreted its Bylaws and implemented elections rules that allow each membership interest one [vote] per vacancy on the Board."

On the contrary, GLA Covenants & Bylaws DO have "specific election procedures" & do NOT allow so called "rules" like "one [vote] per vacancy," nor 'six vacancies to be filled' & Orders p. 8, "one [vote] per vacancy" or "3 votes per membership," obviously violate Covenants 3.20 & 2.07;

Covenant 2.07 requires all rules be "consistent with the intent and enabling provisions of these covenants..." like Covenant 3.20 that says, "a separate and distinct Membership Interest ... is entitled to one (1) vote."

Rule 60 Motion pp. 11 explains: "This language "vacancies" and "positions," is no where to be found in the GLA governing documents with regards to election or voting procedures. These terms were added by the [Court &] GLA to bolster their position ... & absent any authority deliberately added this language not written therein and extended by implication or enlarged by construction its meaning within those Contracts (GLA governing documents)."

Oral Arguments/Table of Authorities Pp. 2 also says, "The word "vacancy" is ... only found within GLA Bylaw VII.(6) applicable only when a Director is removed from office or quits, & Bylaw X.E. for Ombudsman, not applicable here.

GLA Answer (pp. 33) yet agrees "the 12 seats on the board do not need to be filled," yet they deny pertinent Covenants 3.20, 2.07 & misapply §35-2-536 MCA:

This election procedure law says, "Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members."

GLA misinterpret this law by claiming 12 Board seats for annual elections are 12 "separate matters, or "vacancies." But this law doesn't say "vacancies," and Board seats are not "separate matters" or votes, because Bylaw V(F) shows, "For purposes of tabulating the written vote and consent of the Members...: 1. Each Membership Interest is entitled to one vote..." & Bylaw VI(A) clearly allows up to 8 seats to remain unfilled thus do not require separate votes for eight Board seats, thus are not separate matters or vacancies. So one membership is authorized only one whole vote per Board election or a fractional vote for 2 or more candidates.

Orders in err deny all these GLA bylaw & covenant election procedures & law §35-2-536 MCA, & instead added language not written therein (words like "vacancy,") that extended by implication or enlarged by construction the meaning within applicable GLA governing contracts, thus misinterpreted the contracts,



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absent a finding of ambiguity, as contrary to *Gosney* & contrary to Bylaw XII(A) that does NOT allow interpretation of Covenant 3.20.

12. Answer Brief misrepresents the facts and record and makes new arguments not found in the lower court to claim: p. 34 "O'Connells acquiesced to the election procedures, ran for director and won" & p. 35 "O'Connells have waited nearly ten years before challenging GLA's election procedures" & p. 36 "delay in asserting this claim ... [is] inequitable"

The record shows these are new claims on appeal not made in the lower court & should not be considered in this court. These claims are also false as Rule 60 motion explains, 'Orders failed to find any inequitable prejudice or injurious delay of claim, pursuant to *Edwards v Cascade County*, as key requirements for laches, etopple, & waiver doctrines to apply & O'Connells only became members in 2005' as Bolen/Allen Affidavits admit. Also O'Connells (Affidavit (§§ l, m) & Appeal Brief (p. 7)) are pleadings against laches & etopple, & waiver, that says, "Whether or not members challenged past elections is a mute issue," because O'Connells Affidavit § j denies knowingly consenting (acquiesce) to Defendants actions that yearly violate anew Covenant 3.20 & Bylaw VI.A. one vote limit.'

Rule 60 motion also says this 2011-2012 election 'claim is timely per §27-2-301 & §27-2-202, MCA. 8 year contract claim deadline. GLA Answer pp. 36 yet misapplies this law to their defense, but this law directly refuted June 19th Orders assertion that election claim is waived or untimely under laches & etopple, because election claim is timely within the 8 year deadline & for Orders being absent any finding of prejudice OR injurious delay. Orders err for this oversight/

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omission of such material facts & evidence within O'Connells' Reply Brief, Affidavit, & Rule 60 motion; & Orders err for adding language not found within covenants or bylaw, & for denial of election restrictions in the governing contracts, that arbitrarily & capriciously deny O'Connells' due process rights afforded under this law & contracts.

13. GLA Answer Brief p. 36 misrepresents the facts and record and makes new arguments not found in the lower court to claim: "O'Connells never made the argument in the District Court that equitable estoppel, laches, or waiver applied to ... guest houses." & §27-2-202 "statute of limitations is not applicable here" for the guest house claim.

On the contrary, O'Connells DID make such arguments in the District court including O'Connells' Rule 60 motion that states:

p. 10 "The authorities above at least shows laches and estoppel doctrines should apply to the guest house issue, but not to the election issue."

p. 2 "Orders further denies members fundamental due process rights (examples: the doctrine of laches and equitable estoppel misapplied to the election issue but not the guest house issue and failure to apply limitations per §27-2-202, MCA. that effectively BARS guest house assessments after 8 years, and failure to apply limitations per §27-2-301, MCA..."

GLA failed to refute any of these pleadings made in the lower court, thus can not do so now on appeal. GLA also failed to refute O'Connells' Affidavit ¶ k& j showing guest houses were built before 2007, and GLA "opted to charge "guest house" assessments for the first time in 17 years ...;" Thus Orders failed to apply statute §27-2-202, & §27-2-301, MCA... as applicable & contrary to GLA's new

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assessments for guest houses which assessment claim is made 17 years AFTER  
Covenant 3.12 "dwelling unit" & 11.03 "assessments" were adopted in 1997.

14. GLA Answer Brief misrepresents the facts and record to claim: p. 37  
"GLA Bylaws do not limit these [§ 35-2-118(1) MCA] statutory powers but  
complement them..." O'Connells "ignore the Bylaws and Montana law..." & p. 38  
O'Connells "maintain the GLA Board has no power to delegate administrative  
functions to Minnick and that the Board must do every GLA task itself."

On the contrary, GLA took this issue & law § 35-2-118(1) out of context by  
omitting its limiting clause that says "Unless its articles of incorporation provide  
otherwise..." In fact, GLA Articles do provide otherwise and say GLA Articles  
IV(E), "The Association is... to be limited in the exercise of its powers, as may be  
further provided from time to time in such Bylaws;" which includes Bylaw VI(D)  
that says "Only Committees of Directors...may exercise the authority or powers of  
the Board..." & Covenant 10.01, "The Association is the sole administrative  
authority in the Community." And these pertinent contract clauses were obviously  
violated by the Minnick contract pp. 1 that states, "GLA hereby grants Minnick  
Management Inc. the authority and power to perform any and all lawful actions  
necessary for the accomplishment of services outlined below..." (emphasis added)

Also, O'Connells never said 'the Board must do every task themselves nor  
power to delegate administrative functions.' On the contrary:

Reply Brief pp. 10-11 says, "Bylaw VI/B. part 6 yet allows limited duties "as  
necessary" for agents and employees; thus does not omit agent duties altogether ...

[O'Connells Oral Argument cited "necessary" duties like CPA duties or road grading that require skills & equipment the GLA does not have]" but "most GLA duties given over to "agent" Minnick Management [without member input or due process] were not prescribed "as necessary" per Bylaw VI.B., evident by GLA performing most of these duties for the past 17 years. The Bylaws do not give "authority and power" to an "agent..." "Defendants deliberately violated its governing documents by GLA giving agent-Minnick their "authority & power" per Minnick contract (p. 1 above).

GLA's Answer failed to refute all these appeal claims above and others from

O'Connells Reply Brief:

'Minnick contract and GLA violated more Bylaws [Bylaw VI.B(6), Bylaw VI.B., Bylaw V.D. & Bylaws VII.E-H & §35-2-440, MCA] to hand 111 duties including officer duties over to agent-Minnick (Officer duties such as Minnick collecting assessments & custody of all the assessment monies, pay bills, and enforce assessments thru liens, & more'

GLA failed to refute all these lower court claims on appeal except to say that Minnick was only given "administrative functions." (Answer p. 38) However Minnick contract itself (p. 1) factually refutes this showing GLA's "authority and power" & 111 duties & officer duties were all given to Minnick in violation of Bylaws VI(I), Bylaw VI.B(6), Bylaw VI.B., Bylaw V.D. & Bylaws VII.E-H, GLA Articles IV(E), Covenant 10.01, Covenant 11.05, & §35-2-440 MCA., & § 35-2-118(1). Court's oversight/omission of all these material evidence & facts in dispute negate Orders's assertion that the Minnick contract was allowed under the law & bylaws; which Orders thus arbitrarily & capriciously deny members' due process rights afforded under law & contracts. Orders thus err & should be reversed.

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15. GLA Answer Brief misrepresents the facts and record and makes new arguments not found in the lower court to claim: p. 40 "O'Connells do not specifically list this Order [June 26th, 2013] as one of their issues on appeal" & "O'Connells did not set out in their Motion under what grounds for Rule 60 they brought their Motion, and none ... apply" as "reconsideration of an earlier motion" & "substitution for an appeal" & "mistake .. or ignorance of the law" & p. 41 "the O'Connells [Motion] did not use [authorities for Oral Arguments so] are not grounds for relief" & p. 42 "District Court noted the same arguments made by the O'Connells in the Rule 60 motion were made at oral arguments. (Exhibit B at 2)."

On the contrary, GLA failed to refute O'Connells' Motion in the lower court, & can not do so now on appeal. Also facts & record refute GLA's statements: O'Connells' "Notice of Appeal" DID include "June 19, 2013, & June 26, 2013" Orders, & O'Connells Rule 60 Motion DID set out what grounds they brought their Motion, summarized on p. 19:

"Orders lack pertinent, material "a. Corrections Based on Clerical Mistakes; [include] Oversights and Omissions..." and those Orders contain numerous and material "a. mistake(s), inadvertence, surprise;" allow GLAs "(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party" (shown also in motion for sanctions), and "(6) any other reason that justifies relief" as outlined herein, AND warrant granting the motions for "3. ...for new trials and amendment of judgment" AND for "(d) Other Powers to Grant Relief ...[per] Rule 56(c)(3) , and (d) rights were also denied members, because the parties Affidavits and pleadings prove only 3 specific issues ripe for summary judgement, not all [but 3 facts in dispute] were "NOT fully Adjudicated on the motions..."

& p. 11 "Members gave to the Court two documents entitled "Table of Authorities" and "Summary of Oral Arguments" ... the Court chose not to include any of these arguments and authorities in it is ruling..."

These applicable arguments ignored by the lower Court are grounds for appeal, not "a substitution for appeal" & do show Court's "mistake .. or ignorance of the law" by the GLA & show grounds for relief for Orders that arbitrarily and

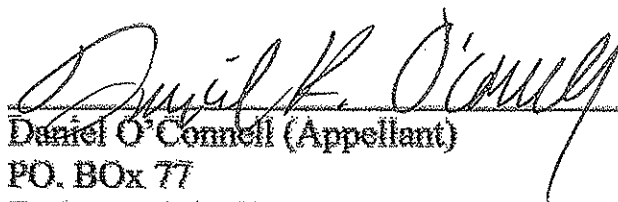
capriciously deny members' due process rights & deny all authorities [cited in Oral Arguments, & for Orders denial of facts in dispute by dismissing all complaint claims in cases 164 & 220; Motion pleadings thus refute such Orders showing this Motion differs from Oral Arguments.


### CONCLUSION

The record & facts proves the lower court Orders in err granted GLA's summary motion dismissing all complaints claims & material facts in dispute & deny members' constitutional due process rights (in 14th amendment) when it granted summary judgment, without a hearing & discovery.

For the foregoing reasons, Summary Judgment Orders should be reversed & questions of law strictly construed in members favor, & any remaining issues in dispute remanded for further discovery & hearing by jury.

DATED this 9th day of October, 2013.

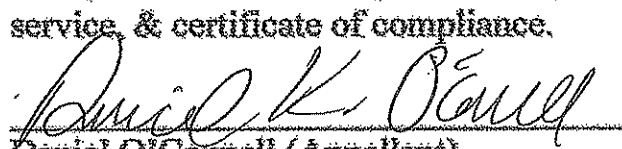
  
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### CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellant Procedure, We certify that this Brief is printed with a proportionately spaced Times New Roman text typeface

of 14 points; is double spaced; & the word count calculated by Microsoft Word 2009, is not more than 5, 000 words, excluding all titles (in bold), certificate of service, & certificate of compliance.

  
Daniel O'Connell (Appellant)

  
Valery O'Connell (Appellant)

**CERTIFICATE OF SERVICE**

We hereby certify that a true & accurate copy of the foregoing Appellant Brief is filed with the Clerk of the Montana Supreme Court; & we have served true & accurate copies of the foregoing upon each attorney of record, & each party not represented by an attorney in the above-referenced Mt. Supreme Court action, as follows via first class mail this 9<sup>th</sup> day of October, 2013 to:

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