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The GLA is at a defining moment in its history.

I wrote in the February newsletter that change comes whether we invite it or not. It would be great if the status quo of bygone years could suffice for tomorrow. If only we could suspend the laws of economics. If only we could inoculate ourselves from litigation. The reality is the world has changed in the past 28 years since GLA's founding in 1997.

Back in the beginning, when all the parcels were of a similar size and the community was sparsely populated, it made sense that assessments were equal for all parcels and all dwellings. But the community has changed and will continue to do so. The Project Review Committee stays busy with lots of building and subdivision applications. As typically happens, parcels closest to major roads developed first. Now in our community, parcels at the highest elevations are seeing significant building activity in recent years. Since 2008, the number of dwellings in our community has ballooned by almost 50%.

The GLA faces a challenge. All landowners, their guests, service people, emergency personnel, and the like deserve safe, drivable roads. That is the mandate of the GLA and its principal reason for existing. It is right in our governing documents...Covenant 11.05 states, "Maintenance and repair of roads and snowplowing shall be the first priority for use of annual assessments." The problem is, this covenant doesn't just apply when it suits the Association. It doesn't just apply to some roads, but not to others. It applies to *ALL* platted roads, including those roads that serve larger parcels and those at higher elevations. Acknowledging this fact is something that prior boards have resisted. There has been bitter disagreement on this point. As things often do, it boils down to money. If currently substandard roads are addressed, if snowplowing is provided for all platted roads, it means either reducing the quality of service to some or increasing assessments to all.

Last year, the Board of Directors approved seeking a legal opinion regarding this issue of the Association's liability. What exactly is the GLA obligation? To promote trust and transparency, rather than hiding what has been discovered, we are sharing what we have learned.

Attached you will find both the letter to the GLA counsel, and the reply. Again, we are including *both* the question and the answer to remove all doubt. Hopefully this will shed light on the topic and make clear why, for starters, the 17-year-old road policy had to be modernized.

There is good news. Your current Board is working hard to find thoughtful ways to address the challenges. We are exploring ways to increase revenues that reflect property and road usage rationally and equitably.

We encourage you to become involved. Please provide your feedback or ideas at: info@glamontana.org

This is an important time for our community.

Respectfully submitted,

Doug Gill
GLA Board of Directors

Glastonbury Landowners Association, Inc.
Road Safety

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February 6, 2025

Dear Kelsey and Ian:

During the past couple of years, the Glastonbury Landowners Association (GLA) has seen its share of debate surrounding both the maintenance of and improvements to its private road network. Some landowners serving as GLA Directors are strongly opposed to providing equal maintenance to all platted roads citing that it is the Board's discretion on how road spending is allocated. They argue that a road that serves fewer parcels should receive a lower standard of care. Other Directors argue that all platted roads are the responsibility of the GLA and should receive the same level of care (not to be confused with the same level of spending, but rather maintained to the same level of quality, meaning that a less-traveled road generally requires less spending to maintain).

Further, and to the point of this letter, there are several sites in the road network that some believe to be unsafe. Specifically, these roads have conditions such as narrowness (no safe passing), blind spots, steep grades, and steep drop-offs on out-sloping roads with no guardrails. These roads do not even meet the GLA's own published standards required to construct roads.¹ There are Directors who argue that because these unsafe roads serve a fewer number of parcels, the financial responsibility for making these roads safe should be borne exclusively by landowners served by these platted roads.²

In 2024, the Board of Directors voted to seek a legal opinion on a simple liability question: **Is the safety of a platted road in the GLA community road network the financial responsibility and legal liability of the GLA (all landowners collectively), or can the GLA inform a limited number of landowners that it is up to those landowners to personally foot the bill for addressing safety concerns on a platted road? In short, what is the risk to the GLA if it chooses to take no action when it is aware of a potentially dangerous road condition.**

You have access to all governing documents of the GLA. There are two things that you will not read in the governing documents but might be useful for you to know. First, is that the increase in the number of parcels and dwellings (and use of dwellings as short-term rentals) in the past decade has led to significantly increased traffic in the community. The number of dangerous close calls has been growing. Second, is that all parcels are assessed the same annual association fees. There is no differential fee, higher or lower, based on what road the parcel is on.

We plan to share this legal opinion regarding responsibility/liability for platted roads with the entire community so that all landowners are given full transparency. Feel free to contact me if I can help clarify anything.

Respectfully submitted,

Douglas W. Gill
GLA President

¹[Road & Driveway Standards](#) 2004 Table 3.1 Road Design Specifications.

- Min width in Mountainous Terrain of 20 feet
- Maximum grade of 12%
- Maximum continuous grade for 500+ feet of 10%
- Minimum Road Visibility of 240 feet
- Minimum frequency of turnouts of 500 feet

²The GLA, is required, pursuant to Covenant 8.01.c, to provide vehicular access to all parcels

March 14, 2025

VIA E-Mail Only

Douglas Gill
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RE: Road Liability Issues in Glastonbury

Doug,

This letter provides our response to the three questions posed to us in your letter dated February 6, 2025. For clarity, we have structured our analysis into four parts: first, a summary of our findings; second, a description of what we found to be relevant background information; third, detailed responses to each of your three questions; and, last, a statement of some limitations on our analysis.

Summary

1. The GLA faces potential liability if it takes no action to remedy the potentially dangerous road conditions that it has identified within Glastonbury's private road system.
2. The safety of Glastonbury's private road system is the GLA's responsibility, among others; and
3. The GLA is both financially and legally responsible for maintaining roads within the private road system, for ensuring that new roads are constructed appropriately, and for bringing substandard roads into compliance.

Background

To set the stage for our analysis, we have provided a brief background of the provisions in the GLA's governing documents and other information that we have obtained while answering the questions posed in your February letter. For purposes of this letter, we refer to "Glastonbury" as the collective parcels of real property identified in Exhibit A and Exhibit B to the Restated Declaration of Covenants for the Community of Glastonbury (the "Covenants"). *See* Covenants at § 3.07.

In relevant part, the Covenants specifically define “Platted Road Easements” as the easements shown on Certificates of Survey Nos. 615-A, 616-A, 883, 892, 895, 981, 1173, and the Golden Age Village at Glastonbury North mobile home park plat. Covenants at §§ 3.03, 3.23. We refer to those easements as the private road system.

The Covenants contain several provisions relating to the private road system. For example, the Covenants reflect that it must be the intent of the GLA to “maintain a private road system.” To that end, the Covenants allow the GLA to “designate and define different qualities or levels of road construction and maintenance within the Community (such as residential roads, foothill roads, mountain roads, etc.). Importantly, the Covenants specifically empower the GLA to upgrade the “quality, quantity and/or level of road construction and maintenance . . . at any time.” Covenants at § 8.01.c. We also note that the GLA is granted broad authority to make rules consistent with the intent and enabling provisions of the Covenants and the Glastonbury Land Use Master Plan, Covenants at § 2.07, as well as the authority to adopt minimum road standards, Covenants at § 9.07, which we understand the GLA has done.

In fact, the GLA’s governing documents indicate that maintaining the roads is mandatory, rather than discretionary. For example, the Covenants state that “maintenance and repair of roads . . . shall be the first priority for use of annual assessment funds.” Covenants at § 11.05. Further, although the Covenants allow the GLA to choose to assign or delegate its road maintenance obligations to others, subject to specific requirements, see Covenants at 8.01.g, the Bylaws specifically state that the purpose of the GLA is to “provide for the management, administration, maintenance, preservation and control of the . . . roads . . . within [Glastonbury].” Bylaws at Art. II.B. Relatedly, the Bylaws specifically empower the GLA to “fix, levy, collect and enforce the payment of common charges and assessments to Members required to carry out the duties and obligations of the Association, including, without limitation, the operation and maintenance of the community common property and roads.” Bylaws at Art. VI.B.3. We also note the Bylaws define common expenses as the expenses of “administration and management and expenses for maintenance, repair or replacement of community property . . . [including] maintenance of walks, roads and parking areas[.]” Bylaws at Art. VIII.E.

Further, we understand that there are issues relating to how various roads within the private road network have been constructed—including areas that are narrow, lack safe passing opportunities, have blind spots, steep grades, and steep drop-offs without guardrails. Whether these roads are old or new does not change our analysis—we note that the Covenants allow the GLA to treat new roads and old roads the same in terms of maintenance and construction. Covenants at § 9.08. Relatedly, we also understand that such roads do not comply with the GLA’s stated Road & Driveway Standards adopted pursuant to Covenants.

Finally, we understand that the GLA is aware of safety concerns associated with the condition of certain roads within the private road networks and that a number of dangerous close calls have been growing due to the significantly increased traffic within the private road network over the past decade.

Analysis

With that background, we have reviewed your letter and identified three questions and addressed each separately below.

1. What is the risk to the GLA if it chooses to take no action when it is aware of a potentially dangerous road condition?

Our understanding is that the GLA has identified potentially dangerous road conditions within its private road network and is also aware of a growing number of dangerous close calls.

If the GLA is aware of a potentially dangerous road condition and other similar issues, then the GLA has a responsibility to address those issues in a reasonable manner. First, as indicated above, the GLA is bound by the Covenants and the Bylaws to maintain the private road system. Second, and more generally, even if the governing documents did not require the GLA to maintain the private road system, the GLA would likely have a common law duty to maintain the roads within the private road system in a reasonably safe condition for ordinary use. Further, the GLA also likely has a common law duty to construct said roads so that there was no latent or hidden defect that would pose an unreasonable danger to persons or vehicles using the private road system.

While it is difficult to identify all possible risks that the GLA may face if it takes no action while being aware of potentially dangerous road conditions, we believe that the risk that the GLA would be exposed to liability in the future is high if the GLA does not act to remedy potentially dangerous road conditions within Glastonbury of which it is aware. This is particularly true because, to date, it has identified safety issues within the private road system.

2. Is the safety of a platted road in the GLA community road network the financial responsibility and legal liability of the GLA (all landowners collectively)?

Yes, in our opinion, pursuant to both the Bylaws and the Covenants, the GLA is both financially and legally responsible for the construction and maintenance of roads within Glastonbury's private road system. Our opinion arises from the text of those documents but is further supported by our analysis in § 1 above and conclusion that the GLA likely has a common law duty extending to both the construction and maintenance of the roads within the private road network.

To reiterate, pursuant to the Bylaws, one of the express purposes of the GLA is to maintain and control the roads within Glastonbury. Specifically, the Bylaws obligate the GLA to “provide for the . . . maintenance . . . and control of the . . . roads” within Glastonbury. Bylaws at Art. II, § B.

And again, as stated above, the Covenants contain multiple provisions imposing a duty upon the GLA to maintain the roads within the private road system, including: § 11.05, which requires that the annual assessments first be used for road maintenance; § 8.01, which specifically empowers the GLA to upgrade the “quality” or “level of road construction or maintenance . . . at any time”; § 8.01.g, which allows the GLA to delegate its road maintenance

responsibilities; and, § 9.07, which grants the GLA the authority to adopt minimum road standards.

3. Can the GLA inform a limited number of landowners that it is up to those landowners to personally foot the bill for addressing safety concerns on a platted road?

Likely no, except under limited circumstances. While the GLA's authority over the private road system within Glastonbury is broad, the GLA's Bylaws likely restrict the GLA from imposing costs relating to road maintenance and improvement on to some landowners but not others. That being said, under some circumstances, an individual landowner could be responsible for addressing safety concerns on a platted road (e.g., circumstances where the landowner is remedying issues of their own making).

Generally, if a safety concern arises from the maintenance of roads within the private road system or the substandard construction of roads within the private road system, then it is the GLA's responsibility to correct those issues for the reasons stated above.

Attempting to hold individual landowners liable for costs associated with addressing safety concerns on a platted road within Glastonbury may violate the GLA's Bylaws. Specifically, the Bylaws state that GLA Members cannot be held liable for "actions, debts, liabilities or other obligations of the Association." Bylaws, Art. IV § C. As discussed above, road maintenance, and control over the private road system, is one of the express purposes of the GLA. Further, it is our opinion that maintaining and constructing roads within Glastonbury's private road system is GLA's responsibility given the plain language of the Covenants and the Bylaws. Taken together, attempting to impose costs on specific landowners—as long as they are GLA members—would likely violate the prohibition against holding GLA Members liable for obligations of the GLA itself contained in Article IV, Section C, of the GLA's Bylaws.

Limitations

Answering the questions posed in your February letter based on the information we have currently available required us to make certain assumptions. This section describes those assumptions and provides our best guess as to whether our analysis would change if the assumptions were incorrect.

First, this analysis is based on our review of the Restated Bylaws of the Glastonbury Landowners Association, Inc. (Amended 2023) (the "Bylaws"), the Restated Declaration of Covenants for the Community of Glastonbury dated September 26, 1997 (the "Covenants"), and the information provided in your February letter. If there is other information that we should review, we are happy to consider it.

Second, we have not had the opportunity to review recorded documents, such as certificates of survey or conveyance documents, which may contain information that could alter our analysis.

March 14, 2025

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We appreciate the opportunity to provide you with our opinions as to the answers to these questions. Please let us know if we can be of further assistance.

CROWLEY FLECK, PLLP

/s E. Lars Phillips

E. Lars Phillips