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DEPUTY

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL K. O'CONNELL and VALERY A.
O'CONNELL,

Plaintiffs,

v.

GLASTONBURY LANDOWNERS
ASSOCIATION, INC. Board of Directors,

Defendants.

Cause No.: DV-2011-114
Judge David Cybulski

**DECISION AND ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND RESOVLING
OTHER PENDING MOTIONS**

The Court, having considered the parties' motions, briefing, the facts, and the law decides and orders as follows:

BACKGROUND

Parties and Claims

The GLA is a nonprofit corporation formed for the mutual benefit of landowners within two developments self-named North and South Glastonbury in Emigrant, Montana in Park County, Montana. The GLA has 396 membership interests with 334 unique owners in the two developments. The GLA is governed by its Articles of Incorporation, the Bylaws of the Glastonbury Landowners Association, Inc., the Restated Declaration of Covenants for the Community of Glastonbury, and the Land Use Master Plan. Parcels within the developments are primarily used as residences.

1 The GLA Board consists of 12 volunteer directors, six each from North and South Glastonbury.
2 Directors serve a two-year term, and six directors (three each from North and South Glastonbury) are
3 elected every year (occasionally there are more vacancies if a director has left before the end of the
4 term). The GLA, through its board, maintains the roads and common areas, collects assessments,
5 approves building proposals, evaluates variance requests, enforces the restrictive covenants, and has a
6 myriad of other tasks much like any landowners association.
7

8 Plaintiffs Daniel and Valery O'Connell (Plaintiffs) reside in North Glastonbury. Plaintiffs have
9 filed four lawsuits against the GLA since 2011. Plaintiffs originally filed a Petition for Relief dated June
10 22, 2011 against several individuals and identified them as "all Directors for and on behalf of the
11 Glastonbury Landowners Association, Inc." The Glastonbury Landowners Association, Inc. (GLA) was
12 later joined to the lawsuit.
13

14 The original complaint/petition in this case named eight individuals who were on the GLA board
15 of directors at the time: Richard Bolen, Alyssa Allen, Laura Boise, William Smith, Sheridan Stenberg,
16 Gerald Dubiel, Rich Spallone, and Janet Naclerio. Upon a Motion to Dismiss by the GLA and the
17 named directors, this Court dismissed the petition because it was confusing and unclear. Plaintiffs
18 appealed, and in an unpublished decision dated October 23, 2012, the Montana Supreme Court reversed
19 and remanded to allow Plaintiffs to amend their complaint. Plaintiffs filed a "New Amended Complaint
20 & Motion for Pleading" dated February 31, 2013 [sic].
21

22 The "New Amended Complaint" names the Glastonbury Landowners Association, Inc. and the
23 "current GLA Board of Directors" as Defendants. Upon review of Plaintiffs' "New Amended
24 Complaint," the Court has identified these asserted claims for relief:
25

- 26 1) The GLA is barred by estoppel, laches, and/or waiver;
- 27 2) A reservation of rights to amend their Complaint;
- 28

- 1 3) A request for Declaratory Judgment;
- 2 4) A temporary restraining order under Mont. Code Ann. § 27-19-314 and removal of the GLA
- 3 Board under Mont. Code Ann. §§ 35-2-423 and 35-8-1104; Plaintiffs also allege the GLA has breached
- 4 a previous settlement agreement with Plaintiffs by not providing them with certain documents;
- 5 5) Discovery and an audit of GLA records with periodic audits regarding aggregate spending of
- 6 GLA assessments;
- 7
- 8 6) A request for the Court to require the GLA to make meeting minutes, handouts, and agendas
- 9 available via a website; give notice and allow comment periods before Board and committee votes; and
- 10 bar the use of Roberts Rules of Order at Board meetings;
- 11
- 12 7) The reversal of findings from a variance review for Pete and Cyrese Erickson¹;
- 13 8) Repayment of money spent on certain road maintenance and paid to Board members for
- 14 services provided unrelated to their Board position;
- 15 9) Removal of the GLA Board for ten years for alleged breach of GLA governing documents
- 16 and exceeding powers;
- 17
- 18 10) A request for fees, costs, nominal damages, and sanctions against the GLA Board payable to
- 19 the GLA;
- 20 11) Further relief deemed just and proper by the Court.

21 **Procedural Posture**

22 The GLA moved for summary judgment on all of Plaintiffs' remaining claims on August 4,

23 2014. Currently pending before the Court are Plaintiffs' Motion for Indemnification (Jun. 3, 2014),

24 Plaintiffs' combined Motion for Extension of Time & Motion to Strike Defendant's Motion for

25

26 ¹ This claim is duplicative of a claim already decided by Judge Gilbert in the GLA's favor and affirmed by the Montana

27 Supreme Court. This Court appropriately dismissed this claim in its Order dated December 9, 2013 under the doctrine of *res*

28 *judicata*. It is mentioned here for convenience of reference so the paragraph numbers here match the claims asserted in Plaintiffs' New Amended Complaint.

1 Summary Judgment (Aug. 18, 2014), Plaintiffs' Motion for Relief from Orders Dated September 8,
2 2014 (Sep. 10, 2014), Plaintiffs' Motion for Delay of Orders Pending Rule 60 Motion Outcome (Oct.
3 14, 2014), Plaintiffs' combined Local Rule 10 Motion to Strike Defendants' Summary Judgment
4 Motion & Motion for Sanctions & Motion for Extension to Time to Answer (Nov. 5, 2014),
5 Defendants' Motion to Proceed on Defendants' Summary Judgment Motion Brief (Nov. 18, 2014),
6 Plaintiffs' combined Motion Ordering GLA to Respond to Discovery of Interrogatories and Sanctions
7 (Dec.2, 2014), Plaintiffs' Motion for Orders Reestablishing Parties to the Complaint (Dec. 2, 2014),
8 Plaintiffs' Motion to Strike or Disregard Defendant Allen's Affidavit (May 7, 2015), Plaintiffs' Rule 62
9 Motion & Brief for Stay of Orders 9-17-15 (Sep. 23, 2015), and Plaintiffs' Motion Response for Delay
10 of Orders Pending Rule 60 Motion (Oct. 4, 2015).
11
12

13 Plaintiffs did file a Response in Opposition to Defendants' Summary Judgment Motion on Apr.
14 20, 2015, and they also filed an affidavit in support of a Motion to Deny ("Dismiss") Summary Motion
15 on Sep. 5, 2014). Plaintiffs did not request oral arguments under local rule 3, and the GLA has
16 withdrawn its request for oral arguments. Having reviewed the written documents submitted, the Court
17 finds that the Motion is fully briefed, and Plaintiffs had adequate time to respond to the Motion for
18 Summary Judgment and to conduct discovery and have done so. This Order specifically addresses the
19 GLA's Motion for Summary Judgment, Plaintiffs' Motion for Orders Reestablishing Parties to the
20 Complaint, and the pending awards of attorney fees due to the Court's granting the GLA's Motion to
21 Quash and Motion for a Protective Order on Sep. 8, 2014 and Sep. 15, 2015 respectively. All other
22 pending motions are denied as moot.
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1 **Standard**

2 Under well-established principles of Montana law, the party moving for summary judgment
3 must demonstrate no genuine issues of material fact exist. Upon such demonstration, the burden shifts
4 to the non-moving party to prove, by more than mere denial or speculation, a genuine issue of material
5 fact exists. *Bruner v. Yellowstone Co.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995). Generally, a
6 court looks to the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits to
7 determine whether a genuine issue of material fact exists. *Cate-Schweyen v. Cate*, 2000 MT 345, ¶ 14,
8 303 Mont. 232, ¶ 14, 15 P.3d 467, ¶ 14. Evidence must be viewed in the light most favorable to the non-
9 moving party. *Nelson v. Nelson*, 2005 MT 263, ¶ 15, 329 Mont. 85, 122 P.3d 1196. “Mere denial,
10 speculation, or conclusory statements are insufficient to raise genuine issue of material fact.” *Arnold v.*
11 *Yellowstone Mountain Club, LLC*, 2004 MT 284, ¶ 15, 323 Mont. 295, ¶ 15, 100 P.3d 137, ¶ 15.
12 Further, an “opposing party’s facts must be material and of substantial nature, not fanciful, frivolous,
13 gauzy, nor merely suspicions.” *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1265
14 (1997). Upon the determination that no genuine issues of material fact exist, a court must determine
15 whether the moving party is entitled to judgment as a matter of law. *Bruner*, 272 Mont. at 264, 900 P.2d
16 at 903.
17
18
19

20 **GLA’S MOTION FOR SUMMARY JUDGMENT**

21 The GLA moved for summary judgment in August of 2014. Plaintiffs filed numerous motions to
22 strike, for extensions, and for sanctions before ultimately filing a response in opposition. However,
23 Plaintiffs have not demonstrated any genuine issues of material fact, and each of Plaintiffs’ claims fail
24 as a matter of law.
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1 **1. Claims regarding estoppel, laches, and waiver are nonsensical and should be dismissed.**

2 Plaintiffs claim the GLA is “barred by equitable doctrines or estoppel, laches, and/or waiver.”
3 (See P.’s Am. Com. at 15 (Feb. 31, 2013[sic])). These are not claims for relief. These are affirmative
4 defenses under Mont. R. Civ. P. 8(c)(1) available to a defendant in a lawsuit. It is nonsensical for
5 Plaintiffs use these as a basis for any claim against the GLA. This claim for relief is dismissed as a
6 matter of law.
7

8 **2. Plaintiffs’ second claim for relief fails as a matter of law.**

9 Plaintiffs’ second claim for relief is simply a statement that they are reserving the right to amend
10 their Complaint. (See P.’s Am. Com. at 15 (Feb. 31, 2013[sic])). This is not a claim for relief and does
11 not bar the entry of summary judgment in favor of the GLA.
12

13 **3. Plaintiffs’ claim for Declaratory Judgment fails as a matter of law.**

14 Plaintiffs’ third claim for relief requests Declaratory Judgment in favor of Plaintiffs without
15 stating what they seek Declaratory Judgment on. However, it is clear Plaintiffs’ claims involve
16 questions of validity or construction arising under the GLA governing documents which affect the real
17 property of all members. Plaintiffs are requesting the Court deem their interpretations of the Bylaws,
18 Covenants, and Master Plan correct. However, as addressed below, Plaintiffs are misinterpreting these
19 documents or simply disagreeing with discretionary actions of the GLA Board.
20

21 But as a threshold issue, Plaintiffs have failed to bring a proper Declaratory Judgment action.
22 Mont. Code Ann. § 27-8-202 states:
23

24 Any person interested under a deed, will, written contract, or other writings constituting a
25 contract or whose rights, status, or other legal relations are affected by a statute, municipal
26 ordinance, contract, or franchise may have determined any question of construction or validity
27 arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of
28 rights, status, or other legal relations thereunder.

1 Further, Mont. Code Ann. § 27-8-301 states:

2 When declaratory relief is sought, all persons shall be made parties who have or claim any
3 interest which would be affected by the declaration, and no declaration shall prejudice the rights
4 of persons not parties to the proceeding.

5 Clearly, every member of the GLA is a party necessary to a declaratory judgment action seeking the
6 Court's interpretation of the GLA's governing documents as Plaintiffs are seeking to change rights and
7 interests involving real property of every GLA member under these documents. Thus, every member of
8 the GLA is a party necessary to this action. *St. Paul Fire & Marine v. Cumiskey*, 204 Mont. 350, 358,
9 665 P.2d 223, 227 (1983). Because Plaintiffs have failed to join the necessary parties, their claim under
10 the Declaratory Judgment Act fails as a matter of law.

11 **4. Plaintiffs' requests for removal of the board, allegations of breach of the settlement agreement,**
12 **and arguments regarding document inspection fail.**

13 Plaintiffs request in their fourth claim for relief a temporary restraining order under Mont. Code
14 Ann. § 27-19-314 against the GLA. They also request removal of the GLA Board under Mont. Code
15 Ann. §§ 35-2-423 and 35-8-1104. Finally, Plaintiffs also allege the GLA has breached a previous
16 settlement agreement with Plaintiffs by not providing them with GLA documents. These claims fail as a
17 matter of law.
18

19 **a) Plaintiffs have no legal standing to remove the GLA board.**

20 First, Plaintiffs have requested a restraining order under Mont. Code Ann. § 27-19-314 (which
21 actually addresses temporary restraining orders). Other than this demand, Plaintiffs offer no other
22 supporting information for this claim. They do not identify what behavior they want restrained, they
23 have not asked for a hearing on a temporary restraining order despite filing this amended complaint over
24 two years ago, nor have they explained what irreparable injury would result from a failure to grant a
25 temporary restraining order. On its face, this demand fails as a matter of law.
26
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1 Second, Plaintiffs seek removal of the GLA board under Mont. Code Ann. §§ 35-2-423 and 35-
2 8-1104. As a threshold issue, these claims are procedurally defective and fail as a matter of law. Mont.
3 Code Ann. § 35-2-423 allows for a judicial proceeding to remove a director of a nonprofit corporation
4 in an action “commenced by the corporation, by its members holding at least 10% of the voting power
5 of any class, or by the attorney general in the case of a public benefit corporation....” Plaintiffs cannot
6 bring this action because they do not constitute 10% of the voting power of any class. The evidence
7 provided and not contested shows that Plaintiffs’ one membership interest vote constitutes less than one
8 percent of the total membership interest votes. Plaintiffs do not have statutory standing to bring this
9 action, and it fails as a matter of law.
10

11 Plaintiffs also cite Mont. Code Ann. § 35-8-1104 as grounds for removal of the GLA board as a
12 “derivative action.” Again, this fails as a matter of law as that statute applies only to actions by
13 members of limited liability companies. The GLA is a non-profit corporation and the statutes cited by
14 Plaintiffs are inapplicable.
15

16 **b) The GLA has not breached a prior settlement agreement regarding document requests.**

17 Plaintiffs also allege the GLA has breached a settlement agreement. The GLA and Plaintiffs
18 settled a previous lawsuit by stipulated agreement submitted as evidence by both parties. One the
19 provisions states: “The GLA will provide O’Connell’s with all documents to which they are entitled
20 pursuant to the Montana Non-Profit Corporation Act and GLA Bylaws upon request.” The issues here
21 are the correct interpretation of the Settlement Agreement, the scope of Plaintiffs’ inspection rights, the
22 cost of those inspections, and whether the requests have been properly made.
23
24

25 **i) The terms of the Settlement Agreement**

26 The Settlement Agreement clearly allows Plaintiffs to request documents according to the
27 Bylaws and Montana law. At the time the Amended Complaint was filed, the GLA Bylaws stated: “The
28

1 financial reports and Membership records of the Association shall be available at the principal office of
2 the Association for inspection at reasonable times by any Member².” (Bylaws Art. VIII.I.). GLA
3 Bylaws require two items to be sent to members annually, a statement of receipts and expenditures for
4 each fiscal year (Bylaws Art. VIII.H.), and notices of annual and special meetings containing ballots
5 and proxy forms. (Bylaws Art. V.D.).
6

7 The Montana Nonprofit Corporation Act requires requests to inspect corporate records to be
8 made in good faith and for a proper purpose. Mont. Code Ann. § 35-2-907(3)(a). Further, the member
9 must describe “with reasonable particularity the purpose and the records the member desires to inspect”
10 and the records must be directly connected with the purpose. Mont. Code Ann. § 35-2-907(3)(b) and (c).
11 Finally, Mont. Code Ann. § 35-2-908(3) states: “The corporation may impose a reasonable charge,
12 covering the costs of labor and material, for copies of documents provided to the member.”
13

14 Clearly the Settlement Agreement requires that both Plaintiffs and the GLA abide by the Bylaws
15 and Montana law in regards to document requests. Plaintiffs may inspect GLA records at its principal
16 office if their requests are made in good faith, for a proper purpose, specify the records to be inspected,
17 and such records are connected to that purpose. They must also pay labor and materials for copies.
18 Plaintiffs agreed to this in the Settlement Agreement, but now they allege the GLA Board has breached
19 the Settlement Agreement by failing to provide documents free of charge or failing to provide
20 documents beyond the scope of their inspection rights.
21

22 ii) The scope of Plaintiffs’ inspection rights.
23

24 The Montana Nonprofit Corporation Act sets out the scope of a member’s inspection rights of
25 corporate records. While there are several cross-references, the main statute is Mont. Code Ann. § 35-2-
26 907 which states:
27

28 _____
² This provision was amended in November of 2014 as discussed below.

1 (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and
2 copy, at a reasonable time and location specified by the corporation, any of the records of the
3 corporation described in 35-2-906(5) if the member gives the corporation written notice or a
4 written demand at least 5 business days before the date on which the member wishes to inspect
5 and copy.

6 (2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and
7 reasonable location specified by the corporation, any of the following records of the corporation
8 if the member meets the requirements of subsection (3) and gives the corporation written notice
9 at least 5 business days before the date on which the member wishes to inspect and copy:

- 10 (a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not
- 11 subject to inspection under subsection (1);
- 12 (b) accounting records of the corporation; and
- 13 (c) subject to 35-2-910, the membership list.

14 (3) A member may inspect and copy the records identified in subsection (2) only if:

- 15 (a) the member's demand is made in good faith and for a proper purpose;
- 16 (b) the member describes with reasonable particularity the purpose and the records the member
17 desires to inspect; and
- 18 (c) the records are directly connected with this purpose.

19 (4) This section does not affect:

- 20 (a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with
21 the corporation, to the same extent as any other litigant; or
- 22 (b) the power of a court, independent of this chapter, to compel the production of corporate
23 records for examination.

24 The records a member is entitled to inspect under Montana law are the articles of incorporation, bylaws,
25 minutes of meetings of members and records of actions approved by members for the past 3 years,
26 financial statements showing assets and liabilities and results of operations, a list of names and
27 addresses (home or business) of its current directors and officers, the most recent annual report to the
28 secretary of state, and resolutions of the board of directors relating to the characteristics, qualifications,
rights, limitations, and obligations of members. Mont. Code Ann. § 35-2-906(5). Additionally, a
member may inspect minutes of all meetings of members, the board of directors, records of actions
taken by members or directors without a meeting, and records of all actions taken by committees of the

1 board of directors. Mont. Code Ann. § 35-2-906(1). Finally, a member may inspect accounting records
2 of the corporation and a membership list³. Mont. Code Ann. § 35-2-907.

3 At the time the Amended Complaint was filed, the GLA Bylaws stated: “The financial reports
4 and Membership records of the Association shall be available at the principal office of the Association
5 for inspection at reasonable times by any Member.” (Bylaws Art. VIII.I.). There was no definition for
6 “financial report” or “Membership records” but those terms should be read in conjunction with the
7 statutes above, and the GLA board interpreted them to mean the records enumerated by the Montana
8 Nonprofit Corporation Act. The board “has the power to interpret all the provisions of these Bylaws and
9 such interpretation shall be binding on all persons.” (Bylaws Art. XII.A.). The Court finds the board’s
10 interpretation of what constituted a “membership record” to be reasonable and consistent with the
11 Montana Nonprofit Corporation Act.
12
13

14 Further, this provision was amended by the GLA members in November 2014 to now read: “The
15 Membership Records of the Association shall be available at the principal office of the Association for
16 inspection at reasonable times by any Member in accordance with the Montana Non-Profit Corporation
17 Act under Title 35, Chapter 2 (2014) and as amended.” “Membership Records” was defined to mean
18 “those records that a non-profit is specifically required to keep for inspection pursuant to the Montana
19 Non-Profit Corporation Act under Title 35, Chapter 2 (2014) and as amended.” This amendment
20 confirms the GLA’s previous interpretation of their Bylaws.
21

22 Therefore, Plaintiffs are not entitled to inspect or copy any documents beyond those enumerated
23 above. However, Plaintiffs insist they are entitled to any records the board members may see. Further
24 they ask for other information not enumerated above such as all correspondence between the GLA and
25
26

27 _____
28 ³ The corporation must maintain records of its members in a form that permits preparation of a list of the names and
addresses of all members in alphabetical order by class showing the number of votes each member is allowed to cast. Mont.
Code Ann. § 35-2-906(3).

1 its members, payment arrangements made by members, phone numbers of members, and even records
2 related to closed board sessions which include attorney client privileged material. Plaintiffs also believe
3 they are entitled to inspect check details, deposit checks, cancelled checks, credit card and bank
4 statements. Plaintiffs claim all these records are "membership records" or "financial records."

5 What Plaintiffs fail to acknowledge is that the board, not Plaintiffs, has the power to interpret the
6 Bylaws. Plaintiffs ask the Court to overrule the board and reinterpret the Bylaws the way they see fit.
7 Such an action is not proper as the board has clearly acted within its discretionary powers.
8

9 First, "membership records" and what information is made available to members has always
10 been interpreted by the board to mean name, address, and number of votes pursuant to Mont. Code Ann.
11 § 35-2-906(3). Recently, Montana law has changed to allow members to receive notice of member
12 meeting via email in which case the email address must also be disclosed. Mont. Code Ann. § 35-2-535.
13 The GLA has not shared phone numbers, account balances, private correspondence, and other
14 information about members because it has not considered that information part of "membership
15 records" nor is it required to.
16

17 Further, Plaintiffs have never demonstrated such broad requests are in good faith and made for a
18 proper purpose. Indeed, it is hard to imagine what proper purpose Plaintiffs could have for this
19 information other than nosiness and intent to harass other GLA members. As for the frequency with
20 which Plaintiffs request this information, the Plaintiffs voluntarily limited the number of membership
21 lists they may request to no more than two per year pursuant to the Settlement Agreement.
22

23 Second, the board has interpreted "financial records" which a member may inspect to mean the
24 statement of receipts and expenditures for each fiscal year (Bylaws Art. VIII.H.) and financial
25 statements showing assets and liabilities and results of operations. Mont. Code Ann. § 35-2-906(5)(e).
26 The GLA fulfills its obligations by providing these financial records.
27
28

1 Plaintiffs also allege the GLA is not requiring fidelity bonds for board members. However, Art.
2 VIII.J. clearly states such bonds “may” be required. Again, Plaintiffs are simply disagreeing with the
3 board’s application of discretionary powers which does not constitute an issue of material fact.

4 iii) Meeting minutes.

5 In their response, Plaintiffs repeatedly allege they have been denied copies of meeting minutes
6 from open board meetings, committee meetings, and closed session board meetings. However, Plaintiffs
7 complaints really are mere disagreement with the way the GLA conducts its business. Art. VI.F. of the
8 Bylaws states: “All business of the Board other than confidential matters (in the discretion of the Board)
9 shall be conducted in an open meeting.”
10

11 Plaintiffs take issue with the board exercising its discretion to hold closed meetings about
12 confidential matters. The GLA board does have closed session meetings where it discusses topics such
13 as the ongoing litigation with Plaintiffs and employee matters. Sometimes the open meeting minutes
14 reflect the closed session topics without details. For example, Plaintiffs’ Exhibit 15 shows there was a
15 closed session on December 9, 2013 where an orientation was given to the new board members and this
16 lawsuit was discussed. Plaintiffs cite no law or precedent that would entitle them to the information
17 shared in a private meeting by the organization they are suing.
18

19 The board does mark regular meeting minutes as confidential with the intent of protecting them
20 from distribution outside of the GLA membership. They are not marked in order to deny them to
21 members as Plaintiffs claim—which is contradicted by the fact Plaintiffs possess the open board
22 meeting minutes provided to them by the GLA. Members who request these minutes are provided them
23 as long as the request complies with Montana law. Of course, members should pay the reasonable costs
24 of labor and material incurred in providing them.
25
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1 Further, Plaintiffs claim they were not allowed to inspect minutes is untrue. They have copies of
2 them because they were allowed to inspect and copy. Previous requests for the GLA to make copies for
3 Plaintiffs were denied because Plaintiffs refused to pay the reasonable costs of labor and materials as
4 allowed by law. Plaintiffs previous document requests were "catch-all" requests that failed to state the
5 purpose and identify with reasonable particularity the documents they wished to inspect.
6

7 Plaintiffs also take issue with is the GLA's practice of incorporating committee actions by report
8 into the regular board meetings. As Plaintiffs' Exhibit 8 shows, the various committees report to the
9 board and make recommendations which are then voted on. Some committees have authority to take
10 action, and they report on any actions taken. Plaintiffs allege this shows committee minutes are not
11 taken, but what they really disagree with is the form of the minutes.
12

13 Similarly, Plaintiffs complain of email votes by the board, and the alleged lack of proof of
14 actions by written consent. Bylaws Art. VI.J. allows the board to take action by written consent without
15 a board meeting. It requires the written consent to be attached to meeting minutes. However, the GLA
16 board ratifies all actions by written consent at the next regular board meeting, and on advice of counsel,
17 the board was informed that such ratification obviated the need for attaching the emails because
18 ratification made the emails unnecessary. The Court sees no reason to step into the affairs of the GLA
19 and change this practice.
20

21 Finally, Plaintiffs fail to identify what meeting minutes they were refused. They do not identify
22 dates, times, or meeting for which they were denied minutes. A mere allegation is not a genuine issue of
23 material fact. Here, it is obvious Plaintiffs have meeting minutes because they used them as exhibits.
24 This is not an issue of material fact.
25
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1 iv) Plaintiffs must pay for copies and stop using inspection demands to harass the GLA.

2 Plaintiffs insist they do not need to pay for copies of records. Plaintiffs claim charges are not
3 allowed "per the settlement agreement." Plaintiffs are mistaken because the settlement agreement says
4 no such thing. To the contrary, Plaintiffs agreed documents would be provided pursuant to Montana law
5 and the Bylaws. Montana law clearly allows the GLA to "impose a reasonable charge, covering the
6 costs of labor and material, for copies of documents provided to the member." Mont. Code Ann. § 35-
7 2-908(3). Requesting documents with no intention of paying as agreed is not acting in good faith.
8 Plaintiffs are not entitled to disparate treatment under the law or GLA governing documents. Every
9 other member must abide by the law and pay the reasonable costs of labor and material when making
10 requests and so should Plaintiffs. Finally, it is reasonable that if the Plaintiffs refuse to pay the
11 reasonable costs of labor and material, then the GLA may refuse to honor future requests until Plaintiffs
12 pay the previously incurred charges.
13

14 v) Plaintiffs' requests to inspect and copy documents must be reasonable.

15 A member's inspection right under Mont. Code Ann. § 35-2-907 does not mention how
16 frequently a member may request to inspect corporate documents. The requirement that a request be
17 made in "good faith" encompasses that requests not be made incessantly. Here, Plaintiffs have made 11
18 demands to inspect the GLA's records since May.
19

20 Mont. Code Ann. § 35-2-907 requires requests be made at least five business days in advance
21 but allowing a request every five does is not "good faith" and would not be reasonable. "Interpretation
22 must reasonable." Mont. Code Ann. § 1-3-233. Further,
23

24 It has been called a golden rule of statutory interpretation that unreasonableness of the result
25 produced by one among alternative possible interpretations of a statute is reason for rejecting
26 that interpretation in favor of another which would produce a reasonable result. It is said to be a
27 well established principle of statutory interpretation that the law favors rational and sensible
28 construction. *Yunker v. Murray*, 170 Mont. 427, 434, 554 P.2d 285, 289 (1976) (citation and
quotations omitted).

1 Clearly allowing the Plaintiffs to continue to harass the GLA with incessant document inspection
2 requests is unreasonable, not in good faith, and subverts the purpose of the statute.

3
4 Additionally, Plaintiffs invariably ask for "all" documents in broad generalities, failing to
5 describe "with reasonable particularity the purpose and the records the member desires to inspect."
6 Mont. Code Ann. § 35-2-907(3)(b). Making broad requests for all documents is simply a fishing
7 expedition with no proper purpose. Plaintiffs must describe specific documents they wish to inspect and
8 what purpose the inspection is needed for. Plaintiffs also must show "the records are directly connected
9 with this purpose" and they must do so. Mont. Code Ann. § 35-2-907(3)(c).

10
11 vi) Summary of relief.

12 Plaintiffs have not provided any evidence that the Settlement Agreement has been breached.
13 The Court hereby dismisses Plaintiffs' claims alleging the GLA has breached the Settlement Agreement
14 and that the GLA has failed to provide access to corporate records as required. Further, the Court rules
15 that Plaintiffs are entitled to inspect only those documents enumerated in the Montana Nonprofit
16 Corporation Act as stated in section ii above, and that the GLA's interpretation of its Bylaws and what
17 constitutes "membership records" and "financial records" is correct and within its discretion. Also, the
18 Plaintiffs' right to receive a membership list is voluntarily limited by the Settlement Agreement to twice
19 per year. Additionally, that for future requests, Plaintiffs must demonstrate the demand is made in good
20 faith and for a proper purpose; describe with reasonable particularity the purpose and the records they
21 desire to inspect; and show the records are directly connected with this purpose. And, that Plaintiffs
22 must pay for any copies of records received, and that the GLA may refuse to provide new copies until
23 Plaintiffs pay for amounts past due. Finally, Plaintiffs are reasonably limited to demanding GLA records
24 no more than once a quarter as the frequency with which Plaintiffs make these demands shows they are
25 not acting within good faith and places an undue burden on the GLA.
26
27
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1 **5. Plaintiffs' claims for discovery and for audits of GLA records fails as a matter of law.**

2 Plaintiffs list discovery as a claim for relief. Discovery itself is not a proper claim for relief.
3 Plaintiffs have clearly been afforded ample opportunity to conduct discovery, and this claim may be
4 dismissed as a matter of law.

5 Plaintiffs also allege the GLA has conducted "non-aggregate" spending and "over-spending" on
6 the High South roads. Plaintiffs claim this is a violation of GLA Covenant § 8.01(h). There are 22 miles
7 of roads within the GLA that go from the valley floor at 5,000 feet to elevations of 6,600 feet. The roads
8 referred to as "High South" by Plaintiffs are in South Glastonbury in the higher elevations. Because of
9 the topography, some sections of the roads (including in those in High South) may require more snow
10 plowing, grading, drainage maintenance, and gravel than others. Contrary to Plaintiffs' assertions, the
11 GLA governing documents do not prohibit this. In fact, the spending of assessments for maintenance is
12 at the discretion of the GLA Board.
13
14

15 The Covenants make it clear that:

16 The Association intends to maintain a private road system within the platted road easements for
17 vehicular access to the various parcels within the Community.... The Association may designate
18 and define different qualities or levels of road construction and maintenance within the
19 Community (such as residential roads, foothill roads, mountain roads, etc.) according to its
20 limited ability to deal with such conditions as topography, terrain, elevation, native soil and
21 materials, slope, grade, easement location, parcel location, drainage, climate, weather, snow, ice
22 and mud, and limited resources and equipment. (Covenants § 8.01(c), Exhibit B at 17).

23 Further, "The Association and all of the Landowners and their guests have the right to use any of the
24 platted road easements opened by the Association...." (Covenants § 8.01(a)).

25 Clearly, road maintenance benefits every member in the GLA and their guests. The landowners
26 do not just use the roads to access their own property, but the property of friends and neighbors, the
27 common properties set aside for recreation (most of which are located in High South), the school, the
28

1 church, and the Forest Service lands at the far ends of the roads. The roads are used by vehicles, off-
2 road vehicles, walkers, horses, and bicycles.

3 Plaintiffs make the nonsensical argument that "aggregate" spending means each foot of road
4 within the GLA must receive the same amount of maintenance dollars, regardless of need or location.
5 Plaintiffs argue the roads in High South which are steeper, longer, and reach further up the mountain
6 receive "over-spending." Plaintiffs claim spending must be equal for each foot of road, an absurd
7 argument that disregards reality and common sense.
8

9 This argument fails as a matter of law. First, the Covenants § 8.01(h) on which Plaintiffs rely
10 states:

11 The Association's road maintenance responsibility is limited by and conditioned upon the
12 Landowners' individual and collective payment of and the aggregate amount of the "annual
13 community assessment" as provided in Section 11, together with its ability to increase the
14 assessment to keep up with inflation or increased costs. The Association is not obligated to
15 provide maintenance or snowplowing in excess of the amount that has been paid by Landowners
through the annual assessment.

16 "Aggregate amount" does not mean what Plaintiffs think it means. "Aggregate," given its common
17 definition, means total or combined. Such a definition gives the meaning to the Covenants § 8.01(h) that
18 the GLA is not obligated to spend more on road maintenance than the total it collects. Any other
19 meaning proposed by Plaintiffs would be absurd.
20

21 Some roads, due to the terrain, type of road (gravel or paved), amount of snow received, and
22 whether culverts or other devices are needed likely receive more of the maintenance dollars than others.
23 However, nothing in the GLA governing documents prevents this. Further, all GLA members receive
24 the benefits of that maintenance because they all have a right to access the GLA roads. Those living in
25 North Glastonbury have a right to use the roads in South Glastonbury to visit friends, use the common
26 lands, or access Forest Service lands and vice versa. To stop maintaining or plowing roads once some
27
28

1 dollar limit is reached would be contrary to the purposes of the GLA which is to ensure members can
2 use all the roads.

3 Plaintiffs ask this Court to order an audit and future audits to prevent "over-spending." As
4 argued above, there is no "over-spending" and hence no justification for an audit. Further, the decision
5 to audit is a discretionary one which the board makes at the close of each fiscal year. (Bylaws Art.
6 VIII.H.). There is no justification for the Court to manage the affairs of the GLA as Plaintiffs request.
7 These claims fail as a matter of law.
8

9 **6. Plaintiffs' requests for the Court to rewrite the GLA governing documents fail.**

10 Plaintiffs' sixth claim for relief is essentially a request for the Court to rewrite GLA's governing
11 documents. Plaintiffs ask the Court to order the GLA to make meeting minutes available on a website,
12 allow GLA members to receive all handouts given to board members, allow member comment periods
13 before board votes and committee votes, give notice of all board and committee meetings via a
14 newsletter and website, and issue an order barring the use of Roberts Rules of Order at board meetings.
15 These are all things not required by the GLA's current governing documents but matters of discretion
16 which Plaintiffs disagree with. In short, Plaintiffs want the Court to manage the GLA how they see fit.
17
18

19 **i) The GLA website.**

20 Plaintiffs claim the way the GLA uses its website creates a genuine issue of material fact. It does
21 nothing of the sort. The GLA maintains a website: www.glamontana.org. The GLA was formed in 1997
22 when websites were not common and nothing in the governing documents addresses a website.
23 Plaintiffs cite no Bylaw, Covenant, or law they claim the GLA is violating because there is no Bylaw,
24 Covenant, or law that dictates how the GLA is supposed to run its website. Simply put, Plaintiffs
25 disagree with how the GLA website is administered and ask the Court to impose changes on it
26 unsupported by the GLA's governing documents and Montana law.
27
28

1 However, because a website is a convenient communication and information medium, the GLA
2 has one and has been working toward improving it over time. The website provides notices of upcoming
3 events such as board meetings, the governing documents, board members, a way to email the GLA and
4 leave voice mail for board members, maps, policies and standards, project review application forms, and
5 other information relevant to any member or prospective member. The website, as Plaintiffs point out,
6 does not contain meeting minutes. It was decided to not publish these as they are internal documents not
7 given to the general public.
8

9 Plaintiffs' chief complaint is that the GLA spends money mailing bills, notices, and other
10 correspondence. Plaintiffs fail to acknowledge the GLA is required by law and the Bylaws to mail
11 certain notices. Further, Plaintiffs assume all GLA members have access to the internet and email,
12 which is not the case. Plaintiffs also claim the website use violates Covenant 11.05 for not being
13 consistent with its responsibilities and good business practices. Covenant 11.05 does not use that
14 language and simply reads that maintenance of the roads is first priority for GLA funds with the
15 remainder to be used at the discretion of the GLA.
16

17 The administration of the website and what it contains is a discretionary function of the board
18 which has "the powers and duties necessary for the administration of the affairs of the Association..."
19 (Bylaws Art. VI.B.). The board also may "Do any and all things necessary to carry into effect these
20 Bylaws and to implement the purposes and exercise the powers as stated in the Articles of
21 Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the
22 Covenants." (Bylaws Art. VI.B.14.). Plaintiffs ask the Court, with no justification, to step in and handle
23 the discretionary functions of the GLA by ordering it to administer its website in a specific fashion. The
24 administration of the website (and whether to have one at all) is clearly a discretionary matter for the
25 GLA Board to decide, and this claim should be dismissed.
26
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28

1 ii) Robert's Rules of Order

2 The Plaintiffs also asked this Court to “insure all Board members equal representation rights and
3 participation at meetings by barring Roberts rules of Order.” (P.’s Am. Com. at 16, Feb. 31, 2013). The
4 board uses these commonly accepted and used rules to conduct its meetings. GLA Bylaws Article VI.P.
5 gives a bare outline of the business to be addressed at board meetings, and the board may: “Adopt Rules
6 from time to time for the conduct of any meeting, election or vote in a manner that is not inconsistent
7 with any provisions of the Covenants, Articles of Incorporation or these Bylaws.” (Bylaws Art.
8 VI.B.16.).

9
10 Clearly, it is within the discretion of the board to adopt rules on the conduct of meetings. It is
11 unclear why Plaintiffs take exception to using Roberts Rules of Order given they are the most widely
12 used rules for conducting deliberative meetings, but there is no basis in law for the Court to manage
13 such minute details of the GLA’s affairs nor is this an issue of material fact.

14
15 iii) Notice Requirements

16 Plaintiffs also claim the GLA is violating due process notice requirements found in the Bylaws
17 Art. XI.C., and Plaintiffs allege this is an issue of material fact. That provision reads:

18
19 **Due Process.** Prior to making any new Rules or Regulations, or taking any action to enforce any
20 of the Covenants, Bylaws, Rules or Regulations, the Association, acting through the Board of
21 Directors and officers, shall provide reasonable written notice in accordance with Article V,
22 paragraph D, to all of the Members (in the case of rule-making) or to all directly-affected
23 Members (in the case of a proposed enforcement action) and a reasonable opportunity for any
24 such Member to be heard and to give written or oral comment to the Board of Directors or its
25 designee(s). Enforcement actions shall also include a reasonable fact-finding process whereby
26 relevant information related to all sides of the issue will be gathered and evaluated....

27 Plaintiffs claim the GLA violated the notice requirement and disallowed fact-finding.

28 At the outset “fact-finding” is not required in all cases under Art. XI.C. Fact-finding is only
required when taking enforcement action. This provision also does not apply to all GLA actions as
Plaintiffs assert. It is limited to the making of new Rules or Regulations or actions taken to enforce the

1 Covenants, Bylaws, or Regulations. Plaintiffs fail to cite any example where the GLA made a new Rule
2 or Regulation or took action to enforce Covenants, Bylaws, or Regulations and failed to give notice.

3 Annual meeting notices must be sent to all members as well. (Bylaws Art. V.D.). Notice of
4 board meetings is required to be sent to board members. (Bylaws Art. VI.G.). Plaintiffs ask this Court to
5 broaden the Bylaws and require the GLA to give “notices of all Board and Committee meetings and
6 agendas using GLA newsletters and website...”
7

8 The Bylaws only require notice of certain meetings and actions. In practice, the GLA has used
9 newsletters, phone-in announcements, and the website to provide notice of most board meetings and
10 some committee meetings. Some landowners have received meeting agendas by email at their request.
11 However, sometimes meetings are called on very short notice, and it isn’t feasible for the numerous
12 committees to publish every meeting. Members can get a hold of board members and committee
13 members whenever necessary to provide input or ask questions. Further there is no requirement that the
14 documents given to board members at meetings be given to members either. Indeed, such documents
15 often contain confidential information or are in draft form which cannot be widely distributed. There is
16 no basis for the Court to step in and manage the affairs of the GLA by enlarging the scope of notice
17 requirements in the Bylaws.
18
19

20 Plaintiffs raise two alleged instances of violation of the notice provision claiming they are issues
21 of material fact. First, Plaintiffs cite a conduct policy adopted in 2011 to prohibit recording board
22 meetings. Raising this issue is inappropriate and should not be considered by the Court because this
23 same issue was resolved by settlement of DV-11-193. This issue, among others, at Plaintiff’s request
24 was addressed by the settlement agreement. The GLA rescinded the policy without admission of
25 liability pursuant to the settlement agreement, and Plaintiffs have not been denied the ability to record
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1 board meetings since the settlement agreement. This is not a genuine issue of material fact, and the issue
2 is *res judicata*, moot, and waived by Plaintiffs due to the settlement agreement.

3 Even if it was proper to raise this issue here, the policy does not fall under the notice provision
4 because Art. VI.B.10. gives the board the power to:

5 Adopt Rules and Regulations for the conduct of the affairs of the association and the enjoyment
6 of the Members, provided that no rule or Regulation so adopted shall be in conflict with
7 Montana law, the Covenants, the Articles of Incorporation or these Bylaws....

8 And, as noted before previously, the board has the power to adopt policies for the conduct of board
9 meetings. The recording policy is no different than the adoption of Robert's Rules of Order. Clearly, it
10 is within the discretion of the board to adopt rules for the conduct of meetings.

11 The second alleged violation of the notice provision is the GLA's practice of newly elected
12 board members not officially taking on the duties of board members until the first board meeting after
13 annual elections. Board members are elected in November each year with half of the seats up for
14 election. The next board meeting takes place in December. For reasons of practicality, the incoming
15 board members do not begin board duties until the first board meeting after the election.
16

17 Plaintiffs claim this practice violates the notice provision and the Bylaws (a claim not made in
18 the Amended Complaint). This practice is not something that falls under the notice provision as it is not
19 a "Rule or Regulation" nor an action to enforce the Covenants, Bylaws, Rules or Regulations. It is
20 simply a practice done to aid continuity and for practical reasons. One of the most important roles of the
21 board is to implement snow removal. Having a period of time where the board is hampered in its ability
22 to coordinate snow removal because new board members are not oriented, appointed to committees
23 (such as the road committee), assigned responsibilities, or officers have not been elected would simply
24 harm the GLA's ability to serve its members.
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1 Plaintiffs claim the practice violates the Bylaws, but their interpretation is faulty. Art. VI.D.
2 states directors "shall be elected for terms of two years each. ..." Further: "The members of the Board
3 shall hold office until their respective successors have been elected by the Members and duly qualify."

4 By remaining in office until the next official board meeting, board members are not getting an
5 extra 30 days in office as Plaintiffs claim. Each board member is given a two year term; the two years
6 begins on the first board meeting after the election in December and ends two years later in December.
7 Additionally, the Bylaws do not require an immediate step-down. The Bylaws require a new board
8 member to get elected and "duly qualify." The Bylaws are silent on what "duly qualify" means, and the
9 board has the power to interpret and apply the Bylaws as it sees fit.
10

11 Here, the board has determined a new board member duly qualifies by election and by
12 assumption of board or committee duties at the next board meeting. This is a reasonable interpretation
13 and application of the Bylaws. Further, the Bylaws require that officers be chosen by the board at the
14 next board meeting after the annual meeting, and officers will hold office until the successor has been
15 chosen. (See Art. VII.B.). Therefore, it is contemplated that officers, who are board members, will
16 remain in office until the next board meeting after the annual election, and the board's policy for non-
17 officers is consistent with this provision. Plaintiffs' erroneous interpretation would make Art. VII.B.
18 non-operative—a result disfavored by Montana law. The GLA's policy is a harmonious interpretation of
19 Art. VI.D. and Art. VII.B. and gives effect to both clauses which is favored by Montana law. Mont.
20 Code Ann. §§ 28-3-201 & 204.
21

22 Although the GLA did not violate Bylaws Art. XI.C. because these policies do not require notice
23 under that provision, the GLA still informs its members through newsletters and board meetings where
24 various policies are explained. Members are still allowed and encouraged to give feedback on any
25 policy. Just because it chooses to inform its members in this fashion does not create some duty of due
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1 process for every action by the board. The notice provision specifically applies only to making Rules or
2 Regulations or enforcing the Covenants, Bylaws, Rules or Regulations. The instances complained of by
3 Plaintiffs are not those actions. Plaintiffs seek to have the Court overrule the board's interpretation of its
4 own Bylaws—an express power—and apply the interpretation they want. Plaintiffs' disagreement with
5 the board's reasonable interpretation and application of the Bylaws is not a genuine issue of material
6 fact. All of Plaintiffs claims in their sixth claim for relief fail as a matter of law.
7

8 **7. Plaintiffs' claims regarding the Erickson variance and voting practices have already been**
9 **determined.**

10 This Court appropriately dismissed Plaintiffs' claim regarding a variance given to Pete and
11 Cyrese Erickson in its Order dated December 9, 2013 under the doctrine of *res judicata*. That claim has
12 been litigated and determined by this Court and the dismissal affirmed by the Supreme Court in
13 *O'Connell v. Glastonbury Landowners Association, Inc.*, 2013 MT 259N.
14

15 Plaintiffs raised a new claim in their response to the Motion for Summary Judgment alleging the
16 GLA's voting procedures are illegal—namely the use of secret ballots. Plaintiffs previous lawsuit also
17 contained claims about voting practices and was determined by *O'Connell v. Glastonbury Landowners*
18 *Association, Inc.*, 2013 MT 259N, and it is therefore barred by *res judicata*.
19

20 However, for the sake of completeness, the Court will address Plaintiffs' claims regarding
21 voting practices. The GLA's voting procedures have been in place since the inception of the GLA in
22 1997. Both Plaintiffs have voted using these procedures for many years, and Plaintiff Daniel O'Connell
23 was elected to the board using these same procedures. Raising claims about the GLA's voting
24 procedures now is properly barred by waiver, laches and estoppel. Even if this were not true, their
25 claims have no merit.
26

27 The GLA holds its elections by secret ballot. Allowing members to see who voted for who
28 would chill the election process, and open voters up to retaliation and abuse. Absentee ballots reference

1 member names and parcel numbers thus allowing them to be viewed would violate voter confidentiality.
2 Ballots filled out at meetings do not contain this information but viewing only those ballots would not
3 provide the actual tallies. Further, the GLA protects ballots because it does not want them to be
4 tampered with. Votes are tallied and verified at the annual meetings by volunteer counters.

5 Plaintiffs claim Mont. Code Ann. § 35-2-535 prohibits secret ballots, but it does nothing of the
6 sort. It merely dictates a list of eligible voting members should be created before a meeting. Allowing
7 Plaintiffs access to cast ballots, some of which have member identification, would violate secret ballot
8 procedures and open members up to harassment by Plaintiffs.

9 Plaintiffs also claim the membership list prepared before a meeting pursuant to Mont. Code.
10 Ann. § 35-2-535 requires inclusion of email addresses. Plaintiffs state email addresses must be included
11 as election documents, but are incorrect. Montana law allows members of a nonprofit corporation to
12 elect to receive notice of member meeting via email instead of regular mail—in which case the email
13 address must also be disclosed. Mont. Code Ann. § 35-2-535. Only if a member elects to receive notice
14 by email, is the email address then subject to disclosure under this statute. Plaintiffs have not presented
15 any evidence that the GLA has not disclosed these email addresses. Plaintiffs raise no issues of genuine
16 material fact which preclude summary judgment in regards to elections.
17
18
19

20 **8. Plaintiffs' claims regarding non-aggregate spending and compensation for board members for**
21 **non-board related work fail as a matter of law.**

22 Plaintiffs seek repayment to the GLA from the board for alleged “unlawful distributions” under
23 Mont. Code Ann. § 35-2-436. That statute makes a director who votes for or assents to the distribution
24 of funds in violation of MCA Title 35, Ch. 2 personally liable to the corporation for those amounts.
25 Plaintiffs allege “non-aggregate” spending and director compensation for board duties are “unlawful
26 distributions.” However, Plaintiffs allegations are unsupported.
27
28

1 As shown above, Plaintiffs' interpretation of "aggregate" as used in the Covenants § 8.01(h) is
2 absurd. That section limits the GLA's fiscal responsibility for road maintenance to the aggregate (or
3 total) of assessments collected. The GLA has not violated this section.

4 Plaintiffs' other assertion is that board members are being compensated for their board duties in
5 violation of the Bylaws. This too is unsupported. Article VI.K. of the Bylaws states:

6
7 Directors shall not be compensated for attending meetings and for serving as Directors. By
8 resolution of the Board, the Directors may be reimbursed for actual expenses incurred in
9 attending a meeting. The Directors may not be paid either a fixed sum for attendance at meetings
10 nor a stated salary. Nothing herein contained shall be construed to preclude any Director from
11 rendering service to the Association in any other capacity and receiving reasonable
12 compensation therefor. Compensation to be paid to any member of the Board of Directors for
13 such services rendered must be approved by the Board of Directors. (emphasis added).

14 Additionally, the Board has the authority to:

15 Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws,
16 supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers,
17 agents, employees, or committee members of the Association. (Bylaws Art. VI.B.6.).

18 Officers of the GLA are elected by the Board and with the exception of the secretary, must be Board
19 members. (Bylaws Art. VII.A.). Reading the two provisions of the Bylaws together, it is clear that not
20 only may Board members may be compensated for services rendered in capacities other than as
21 Directors, but they may be compensated if they take on the additional burden of being an officer,
22 employee, or committee member of the GLA. Plaintiffs attempt to strip this language from the Bylaws
23 and allege any service rendered to the GLA by a Board member must be uncompensated.

24 The GLA has paid Board members for non-Board services such as plowing the roads, road
25 maintenance, building construction, organizational accounting, and administrative work. The GLA has
26 paid other contractors for these same tasks. Plaintiffs have insisted that if a board member has a
27 particular skill, the board member must donate that skill to the GLA regardless of whether it is an
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1 enumerated board duty or whether the GLA would normally pay someone for that skill. At a summary
2 judgment hearing in a previous lawsuit Plaintiffs argued:

3 The only necessary duties that they could give away, as I told them over and over again, is what
4 they don't have the skills to do, not what they don't want to do. Not what they don't want to do
5 volunteer wise, which is what they really claim, they don't want to do anything anymore, 'cause
6 they're volunteers, you know, and they have other jobs. So, I told them, quit the Board then.
7 They don't listen. If you're, like, a CPA – it's good business practice to hire a CPA to do
8 bookkeeping. That's a necessary duty, because they don't have the skills. There is no CPA on
9 the Board. For years, and years, and years, there was one, but she is no longer on the Board. So,
10 other than that – if they don't have the skills to maintain the roads, then that's fine to hire out.

11 This is an absurd argument that is contrary to the Bylaws.

12 Plaintiffs have also claimed that Article III of the Articles of Incorporation precludes the GLA
13 from expending its money to pay persons for services rendered to it. That provision states:

14 This association is a mutual benefit nonprofit corporation, pursuant to the Montana Nonprofit
15 Corporation Act, which disavows any intent to exert political influence or engage in lobbying
16 and which does not contemplate pecuniary gain or profit to the members hereof. No part of the
17 net income or assets of the organization shall ever inure to the benefit of any director, officer, or
18 member hereof or to the benefit of any private person(s).

19 To read this provision to preclude payment to directors, officers, members, or any private persons for
20 services rendered as outlined in the Bylaws is also absurd. Plaintiffs' argument would mean the GLA
21 cannot ever pay anyone (not just directors) to accomplish its purposes.

22 Further, the Articles of Incorporation Article VI specifically allows the GLA:

23 Any and all powers, rights and privileges which a corporation organized under the Nonprofit
24 Corporation Law of the State of Montana by law may now or hereafter have or exercise,
25 including, but not limited to, the following:

26 A. To acquire (by gift, purchase or otherwise), own...real or personal property in connection
27 with the affairs of the Association;

28 B. To pay all expenses incurred with the conduct of the business of the Association...;

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

E. To have and exercise such further purposes and powers, or to be limited in the exercise of its
powers, as may be further provided from time to time in such Bylaws.

1 The Articles grant the GLA all the powers given by the Montana Nonprofit Corporation Act. These
2 powers include purchasing real and personal property, purchasing other entities, making contracts,
3 issuing notes, lending money, investing funds, paying pensions, making charitable donations,
4 conducting a business, and fixing compensation of directors, officers, employees, agents. Mont. Code
5 Ann. § 35-2-118.
6

7 Plaintiffs have claimed that the Articles prohibit paying not just directors, officers, or members
8 but “any private persons.” Yet the Articles specifically incorporate the Montana Nonprofit Corporation
9 Act which is contrary to this argument. Further, the Articles of Incorporation also allow the expenditure
10 of funds. Plaintiffs’ argument would not allow the GLA to pay for road maintenance, snow plowing,
11 mailing out notices, renting a venue for member meetings, and all the other expenditures necessary to
12 conduct its business. Such an argument would create a conflict with the Montana Nonprofit Corporation
13 Act and within the Articles of Incorporation; such an argument is absurd.
14
15

16 There is a better interpretation. The Article III of the Articles of Incorporation states the GLA
17 “does not contemplate pecuniary gain or profit to the members hereof. No part of the net income or
18 assets of the organization shall ever inure to the benefit of any director, officer, or member hereof or to
19 the benefit of any private person.” Being a nonprofit corporation, this makes perfect sense as the
20 purpose is not to gain profits and pay them out as dividends or some other benefit given to someone by
21 sole reason of that person being a director, officer, member, or anything else. In other words, the income
22 and assets are not to be given based simply on someone’s status.
23

24 This does not preclude the expenditure of income or assets to procure goods or services from
25 directors, officers, members, or other private persons. Indeed, such expenditures are specifically
26 allowed by the Montana Nonprofit Corporation Act, the Articles of Incorporation, and the Bylaws as
27 shown above. This interpretation gives meaning to all the provisions.
28

1 Thus, the GLA may pay its directors, officers, employees, contactors, and agents for rendering
2 services to the GLA. The only limitation is that it may not pay Board members for attending meetings
3 and for serving as Directors. (Bylaws Art. VI.K.). The GLA has never paid its Board members for
4 attending meetings or for serving as Directors. Plaintiffs have the burden of showing otherwise and they
5 cannot do so. Mere allegations and suspicions are not enough; the GLA is entitled to summary judgment
6 as a matter of law on Plaintiffs' eighth claim.
7

8 Plaintiffs also claim the GLA did not seek out competitive bids for some of the work which
9 violates good business practices under Covenant 11.05. Covenant 11.05 does not mention good business
10 practices nor does it require competitive bids although the GLA provided evidence that it does solicit
11 bids or work as circumstances dictate. The GLA prioritizes funds to be first spent on the roads and then
12 at the GLA's discretion. It bears repeating: the GLA has the discretion to spend the funds as it sees fit.
13

14 Plaintiffs gave examples of past or present board members who have been paid for services
15 other than serving as a director. However, this is allowed by the GLA's governing documents and
16 Montana law. Plaintiffs failed to show board members were being paid for their role as board members.
17 Therefore, there are no issues of material fact, and Plaintiffs' claims fail as a matter of law.
18

19 **9. Plaintiffs' request to remove the GLA Board fails as a matter of law.**

20 As discussed above, Plaintiffs do not have standing to bring a claim to remove the board under
21 Mont. Code Ann. § 35-2-423. Additionally, Plaintiffs have provided no facts that would justify such an
22 extreme remedy. Plaintiffs ask the Court to remove those legally elected by the members because
23 Plaintiffs do not agree with their actions.
24

25 Plaintiffs allege "negligent/willful" violations of the governing documents and that the board
26 exceeded its powers. Plaintiffs provide no evidence of this. "It is well established that 'a suspicion,
27 regardless of how particularized, is insufficient to sustain an action or defeat a motion for summary
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1 judgment,' and that 'unsupported, conclusory, or speculative statements do not raise a genuine issue of
2 material fact.'" *Glacier Tennis Club at Summit LLC v. Treweek Const. Co., Inc.*, 2004 MT 70, ¶ 37, 320
3 Mont. 351, ¶ 37, 87 P.3d 431, ¶ 37 (overruled on other grounds). Plaintiffs can provide no evidence of
4 their allegations, and the GLA is entitled to summary judgment as a matter of law.

5 **10. Plaintiffs' claims for fees, costs, sanctions, and damages fail as a matter of law.**

6 Plaintiffs ask for fees, costs, nominal damages, and sanctions against the GLA board. All of
7 Plaintiffs' claims fail as a matter of law, and they are not entitled to attorney fees, costs, or sanctions.

8 **11. Plaintiffs' claims fail but the GLA's claim for vexatious litigation remains.**

9 Plaintiffs' final claim is for any other relief the Court deems just and proper. Plaintiffs are not
10 entitled to any relief. However, the GLA has filed a counterclaim seeking an injunction preventing
11 Plaintiffs from filing future lawsuits without prior approval of the Court. The dismissal of Plaintiffs'
12 claims here leaves only the GLA's counterclaim to decide.

13 Plaintiffs claim the existence of the counterclaim precludes summary judgment on their claims,
14 but that is not the case. Finally, Plaintiffs argue the fact that the Supreme Court reversed the initial
15 dismissal of their claims and allowed them to amend their complaint shows their case has merit and
16 should not be dismissed. Plaintiffs misread the Supreme Court's Order. Plaintiffs amended their
17 complaint and alleged numerous claims. However, they have failed to produce evidence showing there
18 is a genuine issue of material fact as to any of their claims. Plaintiffs' "New Amended Complaint" is
19 hereby dismissed, and the GLA is granted judgment as a matter of law.
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PLAINTIFFS' MOTION REGARDING THE PARTIES

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2 Plaintiffs filed a Motion for Orders Reestablishing Parties to the Complaint on December 2,
3 2014 seeking to add individuals to the heading. The original complaint/petition in this case named eight
4 individuals who were on the GLA board of directors at the time: Richard Bolen, Alyssa Allen, Laura
5 Boise, William Smith, Sheridan Stenberg, Gerald Dubiel, Rich Spallone, and Janet Naclerio. This Court
6 dismissed that complaint. The Montana Supreme Court reversed the Court and allowed Plaintiffs the
7 opportunity to amend their complaint to make a more definitive statement. Plaintiffs' "New Amended
8 Complaint" dated February 31[sic], 2013 named the Glastonbury Landowners Association, Inc. &
9 "current GLA Board of Directors."
10

11 Plaintiffs seek to change the Defendants to be the Glastonbury Landowners Association, Inc.
12 and the "GLA Board of Directors" specifically identifying Richard Bolen, Alyssa Allen, Laura Boise,
13 William Smith, Sheridan Stenberg, Gerald Dubiel, Paul Ranttalo, Rich Spallone, and Janet Naclerio⁴.
14 They also want to exclude Neil Kremer, Clare Parker, and any new board members since March 2013.
15

16 At the outset, simply naming the "current GLA Board of Directors" does not comply with
17 requirements of the Montana Rules of Civil Procedure to make a person a party to a lawsuit. A person
18 must be identified and served properly; Plaintiffs did neither here. Notably, the composition of the
19 board changes each year, and at the present moment, the board has only one person on it who was
20 named in the original complaint. Naming the GLA as a corporate entity maintains the lawsuit against
21 the GLA despite the change in the board members. However, simply stating "current GLA Board of
22 Directors" is not sufficient to maintain the suit against whoever might become a board member in the
23 intervening years.
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⁴ Only Gerald Dubiel is a current board member.

1 Further, Plaintiffs amended complaint had the effect of dismissing the originally named
2 individuals: Richard Bolen, Alyssa Allen, Laura Boise, William Smith, Sheridan Stenberg, Gerald
3 Dubiel, Rich Spallone, and Janet Naclerio. This Court dismissed those individuals, and Plaintiffs
4 amended complaint dropped them from the heading. Allowing Plaintiffs to amend their complaint to re-
5 name these individuals or add individuals would unnecessarily delay the proceedings. It would not
6 affect the resolution of this case on summary judgment as Plaintiffs give no indication the claims
7 against these individuals would differ from those already asserted against the GLA. It also would harass
8 and prejudice the individuals as the majority of them are no longer board members and believed they
9 had been dismissed from the action. Finally, Plaintiffs have not demonstrated justice requires amending
10 the complaint again.
11

12 **REASONABLENESS OF THE GLA'S ATTORNEY FEES AND COSTS**

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14 On September 8, 2014, the Court granted the GLA's Motion to Quash Subpoenas for
15 Depositions and ordered that Plaintiffs shall pay the GLA's reasonable attorney fees and costs incurred
16 in bringing and briefing that Motion. Additionally, on September 14, 2015, the Court granted the GLA's
17 Motion for Protective Order and ordered that Plaintiffs shall pay Defendant's attorney fees and costs
18 incurred in bringing and briefing that Motion.
19

20 "The District Court has inherent discretionary power to control discovery," and "must regulate
21 traffic to insure a fair trial to all concerned, neither according one party an unfair advantage nor placing
22 the other party at a disadvantage" *Rix v. General Motors Corp.*, 222 Mont. 318, 333, 723 P.2d 195,
23 204-205 (1986). Abuse of discovery must not be dealt with leniently and the transgressors of discovery
24 abuses should be punished rather than encourage repeatedly to cooperate. *Schuff v. A.T. Klemens & Son*,
25 2000 MT 357, ¶ 70, 16 P.3d 1002, ¶ 70, 303 Mont. 274, ¶ 70. It is not necessary for trial courts to warn
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1 of sanctions before imposing them for a violation of discovery. *Smart v. Molinario*, 2004 MT 21, ¶ 13,
2 83 P.3d 1284, ¶ 13, 319 Mont. 335, ¶ 13.

3 While pro se litigants are typically allowed wide latitude in their attempts to comply with the
4 technicalities of pleadings, all litigants, including those acting pro se, must adhere to procedural rules.
5 *Xu v. McLaughlin Research Institute for Biomedical Science, Inc.*, 2005 MT 209, ¶ 23, 328 Mont. 232, ¶
6 23, 119 P.3d 100, ¶ 23. Discovery abuse is not to be dealt with leniently. *Id.* at ¶ 20. The purpose of
7 sanctions is to punish conduct, not reward the opposing party as a fee-shifting device.
8

9 In both instances, the GLA made every effort to explain to Plaintiffs why their conduct was
10 improper and resolve the situations before coming to the Court. In both cases, Plaintiffs were intractable
11 in their wrongful positions which is why the awards of attorney fees was necessary and proper.
12

13 i) Motion to Quash

14 The GLA submitted affidavits of its attorneys regarding the fees incurred for the Motion to
15 Quash in the amount of \$4,984.50. Plaintiffs objected to the amount, but did not request a hearing.
16 Plaintiffs attached an email from a Chicago law firm to support their argument a motion to quash should
17 cost \$750 to \$1,000. Plaintiffs attached a printout which purportedly shows answers by attorneys to
18 someone asking if they charge less than \$600 to file a motion to quash a warrant. These documents
19 provide no basis for their objection.
20

21 The reasonableness of attorney's fees must be ascertained under the unique facts of each case.
22 *Chase v. Bearpaw Ranch Ass'n.*, 2006 MT 67, ¶ 36, 331 Mont. 421, ¶ 36, 133 P.3d 190, ¶ 36. The
23 following factors should be considered in determining the reasonableness of attorney fees:
24

- 25 (1) the amount and character of the services rendered;
26 (2) the labor, time and trouble involved;
27 (3) the character and importance of the litigation in which the services were rendered;
28

1 (4) the amount of money or the value of the property to be affected;

2 (5) the professional skill and experience called for;

3 (6) the attorneys' character and standing in their profession; and

4 (7) the results secured by the services of the attorneys. *Id.* at ¶ 38.

5 These factors, however, are not exclusive. District courts may consider other factors as well. *Id.*

6
7 First, as *Chase* states, the amount of reasonable attorney fees is unique to each case. None of the
8 documents Plaintiffs attach address the particular facts of this case. Second, the email Plaintiffs attached
9 is from an Illinois firm, and the attorney references the Plaintiffs to its information pages on quashing
10 subpoenas to internet service providers in intellectual property violation claims. The second printout is
11 from attorneys (none from Montana) answering a question about quashing bench warrants—criminal
12 law, not civil litigation. Plaintiffs fail to provide evidence to the facts of this case, and instead try to
13 compare apples to oranges.
14

15 The *Chase* factors are simply a restatement of Rule 1.5 of the Montana Rules of Professional
16 Conduct. The unique facts of this case show the time and labor necessary to respond to Plaintiffs is
17 great. Two subpoenas were served in unorthodox manners. Each subpoena had different defects. The
18 circumstances of service and the situation of each witness needed to be investigated. Plaintiffs also
19 contacted the witnesses directly regarding the subpoenas.
20

21 Numerous letters and emails went back and forth between Plaintiffs and GLA's counsel. Filing a
22 motion to quash a deposition subpoena in a civil case is unusual in Montana as Montana attorneys
23 generally work well with one another to arrange schedules and accommodate witnesses—something
24 Plaintiffs refused to do. Additionally, there were time constraints as the motion and accompanying
25 briefs, affidavits and exhibits needed to be investigated, researched, written, and filed before the
26 depositions dates and scheduled departure of one of the witnesses. All this had to take place quickly to
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1 allow the Court time review the briefs and issue an order. The fees incurred by GLA's counsel were not
2 excessive and the billable hour rates are reasonable for their experience and the work done.

3 ii) Motion for Protective Order

4 The GLA submitted affidavits of its attorneys regarding the fees incurred for the Motion to
5 Quash in the amount of \$5,112.50. Plaintiffs objected to the amount, but did not request a hearing.
6 Plaintiffs claim "several other attorneys find \$2K to be a reasonable amount for Defendants' motion, not
7 \$5k." However, they do not identify these other attorneys nor the basis of such a claim. The fees in this
8 case are a direct result of Plaintiffs' excessive filings, demands, and actions.
9

10 In light of the *Chase* factors, the Court finds the submitted amount reasonable. Numerous letters
11 and emails went back and forth between Plaintiffs and GLA's counsel. Filing a motion for a protective
12 order in a civil case is unusual in Montana as Montana attorneys generally work well with one another
13 to resolve discovery disputes—something Plaintiffs refused to do. The motion and extensive
14 accompanying briefs, affidavits and exhibits needed to be investigated, researched, written, and filed.
15 The motion addressed three different issues which all required investigation and research into the
16 circumstances and law for each issue. The fees incurred by GLA's counsel were not excessive and the
17 billable hour rates are reasonable for their experience and the work done.
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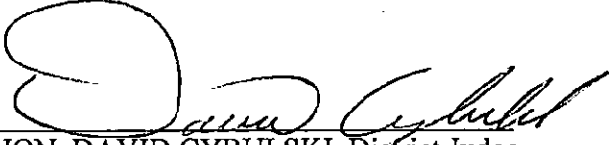
20 This case has been unique in the amount of filings, the inflexibility of the Plaintiffs, the lack of
21 meaningful communication, and the nature of the filings and issues that have arisen. Plaintiffs refused to
22 use the discovery process. Plaintiffs steadfastly refused to act reasonable or communicate in a
23 meaningful way. This behavior is precisely what needs to be deterred in future Montana litigation.
24

25 CONCLUSION

26 For the above reasons, the Court grants the GLA's Motion for Summary Judgment and
27 dismisses Plaintiffs' "New Amended Complaint" in its entirety with prejudice, denies all of Plaintiffs'
28

1 other pending motions, and grants the GLA its reasonable attorney fees in the amounts of \$4,984.50 and
2 \$5,112.50 for the Motion to Quash and Motion for Protective Order respectively for a total judgment of
3 \$10,097.00. The GLA's counterclaim remains to be litigated.

4 DATED this 31st day of May, 2016.

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7 
8 HON. DAVID CYBULSKI, District Judge

9 cc: Daniel and Valery O'Connell
10 Michael P. Heringer
11 Alanah Griffith

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14 } SB