

1 Michael P. Heringer  
2 Seth M. Cunningham  
3 BROWN LAW FIRM, P.C.  
4 315 North 24<sup>th</sup> Street  
5 P.O. Drawer 849  
6 Billings, MT 59103-0849  
7 Tel (406) 248-2611  
8 Fax (406) 248-3128  
9 [mheringer@brownfirm.com](mailto:mheringer@brownfirm.com)  
10 [scunningham@brownfirm.com](mailto:scunningham@brownfirm.com)  
11 *Attorneys for Respondents Glastonbury  
Landowners Association, Inc.*

7 Alanah Griffith  
8 Pape & Griffith, PLLC  
9 26 E. Mendenhall  
10 Bozeman, MT 59715  
11 Tel (406) 522-0014  
12 Fax (406) 585-2633  
13 [Alanah@papegriffithlaw.com](mailto:Alanah@papegriffithlaw.com)  
14 *Attorneys for Respondents Glastonbury  
Landowners Association, Inc.*

12  
13 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

14 DANIEL and VALERY O'CONNELL,

15 Plaintiffs,

16 v.

17 GLASTONBURY LANDOWNERS  
18 ASSOCIATION, INC. Board of Directors,

19 Defendants.

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

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS' MOTION,  
ORDERING GLA RESPOND TO  
DISCOVERY OF INTERROGATORIES,  
REPLY AGAINST DEFENDANTS'  
EXTENSION MOTION, REPLY AGAINST  
MOTION TO PROCEED ON SJM & REPLY  
FOR SANCTION MOTION**

20 COMES NOW the above named Defendant Glastonbury Landowners Association, Inc. (GLA)  
21 and responds to Plaintiffs' Motion, Ordering GLA Respond to Discovery of Interrogatories, Reply  
22 against Defendants' Extension Motion, Reply against Motion to Proceed on SJM & Reply for Sanction  
23 Motion. Plaintiffs' filing addresses several topics including motions, discovery, and more requests for  
24 sanctions. Of note, Plaintiffs address the GLA's pending Motion for Summary Judgment at length  
25 arguing what they assert constitutes facts in dispute. The Court should consider this Plaintiffs' response  
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1 to the GLA's Motion for Summary Judgment (MSJ). Plaintiffs are not entitled to any of the relief they  
2 seek.

3 **A. Plaintiffs oppose the GLA's Motion for an Extension to Respond to Plaintiffs' Interrogatories.**

4 This issue is moot as the Court granted the GLA's motion on December 4, 2014. Therefore,  
5 Plaintiffs have no grounds for requesting sanctions against the GLA for requesting an extension to  
6 answer discovery.  
7

8 **B. Plaintiffs move to strike the GLA's Motion for Summary Judgment again.**

9 The GLA filed a Motion for Summary Judgment on August 4, 2014. Plaintiffs filed Motions to  
10 Strike the GLA's MSJ on August 18, 2014 and November 5, 2014. The first motion asserted the MSJ  
11 was scandalous and requested the GLA's counsel be admonished. The second motion asserted the brief  
12 was over length and requested sanctions. The GLA responded to both motions and incorporate those  
13 responses herein.  
14

15 Now, Plaintiffs again move to strike the GLA's motion asserting unsupported facts in dispute.  
16 Plaintiffs have now filed three responses to GLA's MSJ. Plaintiffs have had months to prepare a  
17 response, and now assert "40 material complaint facts in dispute" as grounds for striking the summary  
18 judgment motion. However, as shown below, Plaintiffs alleged facts are merely allegations with no  
19 supporting evidence. Plaintiffs have had three opportunities to respond and allowing Plaintiffs to file  
20 another response to the summary judgment motion will delay the proceedings and unfairly allow  
21 Plaintiffs multiple attempts to meet their evidentiary burden.  
22

23 1. Plaintiffs' "facts in dispute" are merely their unsupported conclusions.

24 Plaintiffs argue the GLA's responses to its requests for admission are grounds for striking the  
25 summary judgment motion because the answers constitute "material complaint facts in dispute."  
26 Plaintiffs misunderstand the standard for summary judgment. The party moving for summary judgment  
27  
28

1 must demonstrate no genuine issues of material fact exist. Upon such demonstration, the burden shifts  
2 to the non-moving party to prove, by more than mere denial or speculation, a genuine issue of material  
3 fact exists. *Bruner v. Yellowstone Co.*, 272 Mont. 261, 264, 900 P.2d 901, 903 (1995). “Mere denial,  
4 speculation, or conclusory statements are insufficient to raise genuine issue of material fact.” *Arnold v.*  
5 *Yellowstone Mountain Club, LLC*, 2004 MT 284, ¶ 15, 323 Mont. 295, ¶ 15, 100 P.3d 137, ¶ 15.  
6 Further, an “opposing party’s facts must be material and of substantial nature, not fanciful, frivolous,  
7 gauzy, nor merely suspicions.” *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1265  
8 (1997).  
9

10 The GLA demonstrated through evidence and law there are no issues of material fact preventing  
11 summary judgment. Plaintiffs have the burden of producing evidence otherwise. Here, Plaintiffs simply  
12 make the conclusory statement that material facts are in dispute without providing any evidence to  
13 support their statement.  
14

15 First, Plaintiffs argue the definition of aggregate is a material issue of fact. This is not the case.  
16 Plaintiffs have asserted in their amended complaint the GLA Covenants require “aggregate” spending  
17 which they defined in their amended requests for admission as:  
18

19 4. As used herein, the term “Aggregate” or “aggregate spending” is pursuant to GLA Covenant  
20 8.01(h) to mean equally spend on GLA roads based upon the amount of the individual AND  
21 collective GLA member assessments for a certain member road area (such as North and South  
22 Glastonbury or High South Glastonbury).

22 The GLA objected to Plaintiffs’ definition:

23 Defendants object to Plaintiffs’ definition of “aggregate” as this is the definition they wish to  
24 impose which is not supported by the plain meaning of the word or the GLA Covenants. The  
25 definition of “aggregate” as used in the Covenants is an issue in this case, and Defendants  
26 disagree with Plaintiffs’ interpretation of the term.

26 The O’Connell’s fundamental misunderstanding of the meaning of aggregate spending is covered in the  
27 GLA’s Brief in Support of MSJ. Aggregate spending as required by the GLA governing documents  
28

1 means the Association is not obligated to spend more on road maintenance than the total assessments it  
2 collects. Therefore the GLA is spending aggregate amount of assessments as required.

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. Plaintiffs’ argument disregards the plain meaning  
8 of the Covenants, and would require the Court to rewrite the GLA’s governing documents. The GLA  
9 demonstrated in the summary judgment brief that the issue of what aggregate means is not in dispute.  
10 Plaintiffs have the burden of showing otherwise, and they have not done so other than to insist their  
11 definition is right.  
12

13  
14 Second, Plaintiffs assert their pre-discovery disclosure “presents numerous procedural and  
15 statutory authorities supporting each and every complaint claim cited within its Requests for  
16 Admission.” However, the document Plaintiffs refer to consists of nothing but accusations, speculation,  
17 and conclusory statements. Plaintiffs do not present any actual evidence in support of their claims.  
18 Plaintiffs cannot meet their burden for summary judgment simply by making unsupported claims.  
19 Further, all of Plaintiffs’ claims are matters of interpretation of the Montana Nonprofit Corporation Act,  
20 the GLA governing documents, and other written documents. These are all claims appropriate for  
21 summary judgment by the Court rather than a jury trial.  
22

23  
24 Third, Plaintiffs assert the GLA has violated the terms of a settlement agreement from a previous  
25 lawsuit. (See Exhibit D to GLA’s Brief in Support of Summary Judgment). Plaintiffs argue this  
26 constitutes a factual dispute. Again, Plaintiffs give no evidentiary support to refute the GLA’s evidence  
27 given in its summary judgment brief. Instead, they allege the GLA has breached the agreement without  
28

1 explaining why they do not have to comply with the Montana Nonprofit Corporation Act as stated in the  
2 settlement agreement which requires document requests to be made in good faith, for a proper purpose,  
3 specify the records to be inspected, and show such records are connected to that purpose. They must  
4 also pay labor and materials for copies. They also do not explain why they are entitled to request  
5 documents outside of the scope of the Montana Nonprofit Corporation Act. Finally, as Plaintiffs point  
6 out, the settlement agreement is treated like a contract, and the Court's interpretation of its terms are  
7 appropriate for summary judgment.  
8

9 Fourth, Plaintiffs assert the GLA has admitted to paying directors to maintain roads which they  
10 allege is a conflict of interest. Again, this is something Plaintiffs have alleged but not provided any  
11 evidence that such actions were not allowed. As shown in its summary judgment brief, the GLA may  
12 pay directors for services rendered in capacities other than as directors. (See Article VI.K. of the  
13 Bylaws). Plaintiffs assert paying a board member for services constitutes a conflict of interest under  
14 Mont. Code Ann. § 35-2-418. However, their argument misconstrues the law. The statute reads:  
15

- 16 (1) A conflict of interest transaction is a transaction with the corporation in which a director of  
17 the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable  
18 or the basis for imposing liability on the director if the transaction was fair at the time it was  
19 entered into or is approved as provided in subsection (2) or (3).  
20 (2) A transaction in which a director of a public benefit corporation or religious corporation has  
21 a conflict of interest may be approved:  
22 (a) in advance by the vote of the board of directors or a committee of the board if:  
23 (i) the material facts of the transaction and the director's interest are disclosed or known to the  
24 board or committee of the board; and  
25 (ii) the directors approving the transaction in good faith reasonably believe that the transaction is  
26 fair to the corporation;  
27 (3) A transaction in which a director of a mutual benefit corporation has a conflict of interest  
28 may be approved if:  
(a) the material facts of the transaction and the director's interest were disclosed or known to the  
board of directors or a committee of the board and the board or committee of the board  
authorized, approved, or ratified the transaction; or  
(b) the material facts of the transaction and the director's interest were disclosed or known to the  
members and they authorized, approved, or ratified the transaction.

1 Even if transactions such as paying a director for snow plowing were a conflict of interest, Plaintiffs  
2 argument fails because as shown in subsection (1) because the transaction is not voidable and cannot  
3 impose liability if it was fair or approved by a method in subsections (2) or (3). The GLA board does  
4 approve paying its directors for services rendered in capacities other than as directors (as allowed by the  
5 Bylaws), and it knows the material facts and the director's interest before doing so. Plaintiffs have  
6 presented no evidence to the contrary, and the claims otherwise do not constitute issues of material fact.  
7

8 Plaintiffs also assert the GLA failed to get competitor bids, but again they give no evidence of  
9 this. The GLA does solicit bids for work it needs done. However, nothing in the GLA governing  
10 documents requires bids for work done. The standard is whether the transaction was fair, not how many  
11 bids were obtained or not obtained. This argument is not grounds for denying summary judgment.  
12

## 13 2. Plaintiffs reargue their previous Motions to Strike.

14 Plaintiffs again argue the GLA's MSJ should be stricken due to its scandalous content and  
15 length. They argue these are "abusive practices." The GLA incorporates its responses to Plaintiffs' first  
16 two motions to strike in response these assertions. Those responses addressed these issues in more  
17 depth, but they are summarized here.  
18

19 First, a motion to strike is an improper response to a motion for summary judgment. *State ex rel.*  
20 *McVay v. Dist. Ct. of Fourth Jud. Dist.*, 126 Mont. 382, 395, 251 P.2d 840, 847 (1952). The proper  
21 procedure is to respond with an objection and address the merits of the motion, and argue against it at a  
22 hearing. Second, a motion to strike under Mont. R. Civ. P. 12(f) is only available to strike a pleading,  
23 not a motion. Third, the decision to strike a filing under local rule 10.E is undertaken by the Court on its  
24 own initiative, not by motion of the Plaintiff. Finally, these arguments merely ignore the fact the GLA's  
25 MSJ has shown there are no issues of material fact precluding summary judgment in its favor.  
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1 **C. Plaintiffs' motion for sanctions fails.**

2 Plaintiffs return to issues already decided by the Court and argue the GLA should be sanctioned  
3 because its motion to quash subpoenas filed August 26, 2014 did not show an undue burden on the  
4 deposed. They also assert the GLA has refused to answer Plaintiffs' requests for admission, and that the  
5 GLA's request for an extension to answer interrogatories and refusal of Plaintiffs' "solution" justify  
6 sanctions. Plaintiffs' arguments are full of hyperbole but lack substance.  
7

8 1. The Motion to Quash is res judicata and Plaintiffs' attempts to reargue it fail.

9 Plaintiffs again argue their deposition subpoenas did not constitute an undue burden, and they  
10 should not have been sanctioned under Mont. R. Civ. P. 45(d). As shown in the affidavit of Janet  
11 Naclerio attached to the original Motion to Quash, her trip was planned months before Plaintiffs decided  
12 to take her deposition. Aff. Naclerio at ¶ 2 (Aug. 20, 2014). Requiring her to change flights and  
13 accommodations to accommodate Plaintiffs' inexplicable delay in conducting discovery is  
14 unreasonable. Plaintiffs insisted Ms. Naclerio pay to change her flights and cancel hotel  
15 accommodations. This was an undue burden and expense on her.  
16

17 Plaintiffs continue to insist it was not, and ask the Court to rescind its Order dated September 8,  
18 2014 granting the GLA's Motion to Quash. The subpoenas were quashed for the undue burden and  
19 expense imposed on Janet Naclerio, because they were defective, and because they had not yet done a  
20 pre-discovery disclosure. The Court sanctioned Plaintiffs for imposing an undue burden on Janet  
21 Naclerio. Plaintiffs fail to understand this distinction. Finally, Plaintiffs have yet to explain why causing  
22 someone to cancel a planned and paid for vacation when the deposition could have been moved two  
23 weeks does not constitute an undue burden. All they do is assert that it does not. This issue has been  
24 argued ad nauseam, decided by the Court, and Plaintiffs add nothing new in the current motion.  
25  
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1 2. Plaintiffs assertions the GLA has denied or delayed discovery must fail.

2 Plaintiffs assert the GLA refused to answer some of their amended requests for admission,  
3 specifically numbers 7, 8, 9, 10, 11, 39, 44, and 45. Attached as Exhibit A are the GLA's responses to  
4 these amended requests for admission. It is self-evident the GLA answered these requests. Plaintiffs  
5 may not like or agree with the answers, but the GLA is only under the obligation to answer truthfully—  
6 not how Plaintiffs want it to answer.  
7

8 Further, Plaintiffs emailed the GLA on December 2, 2014 with requests for admission numbers  
9 7, 8, 9, 10, 11 39, 44, and 45 "rephrased for clarity." (See Exhibit B). Plaintiffs obviously acknowledge  
10 the answers were the result of poorly drafted requests, not any attempt to evade answering truthfully.  
11 Plaintiffs redrafted these requests in an attempt to make them clearer. The GLA responded by letter on  
12 December 12, 2014 with its position that the "rephrased" requests constitute new requests for admission  
13 and that it would respond within 30 days as allowed by Mont. R. Civ. P. 36. (See Exhibit C).  
14

15 Plaintiffs admit their requests were unclear and rephrased them yet they accuse the GLA of  
16 refusing to answer. The GLA did answer the requests to the best of its ability. The problem with the  
17 answers, if there was one, was due to the drafting, which Plaintiffs acknowledged. Plaintiffs redrafted  
18 the requests and resent them. To accuse the GLA of wrongdoing for its answers to those same requests  
19 is rank hypocrisy.  
20

21 Plaintiffs seek sanctions for the GLA's alleged failure to answer requests for admission. There is  
22 a specific procedure under Mont. Civ. P. 37 (c)(2) for doing so, and Plaintiffs have not complied with it.  
23 That rule requires the requesting party to prove a document to be genuine or a matter to be true, and  
24 then move to have the denying party pay reasonable expenses incurred in making the proof. Even then,  
25 they are only entitled to sanctions if none of the exceptions apply. Plaintiffs offer no proof regarding  
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28



1 these requests for admission. Their own act of redrafting them demonstrates their dissatisfaction with  
2 the answers was due to their drafting rather than the GLA's answers.

3 Finally, Plaintiffs argue the GLA's request for an extension to answer the Plaintiffs'  
4 interrogatories, which they denied, and subsequent motion to the Court for an extension, which was  
5 granted, constitute grounds for sanctions. Again, Plaintiffs failed to comply with Mont. R. Civ. P. 37  
6 which governs sanctions for failing to answer discovery. However, the argument is moot because the  
7 Court granted the GLA's motion for extension over Plaintiffs' objections which shows the GLA was  
8 acting reasonably in requesting an extension.  
9

10 3. Plaintiffs are not entitled to sanctions for GLA's alleged refusal to answer discovery requests or any  
11 other reason.

12 Plaintiffs accuse the GLA of an "avalanche of motions" which refuse to answer discovery and  
13 unnecessarily deny or delay discovery and resolution of this case. First, it should be noted the GLA has  
14 two motions currently pending before the Court: its MSJ and its Motion to Proceed on Summary  
15 Judgment. The GLA did file a Motion to Quash and a Motion for an Extension which were both granted  
16 by the Court demonstrating their validity.  
17

18 In contrast, Plaintiffs motions currently pending before the Court include Plaintiffs' Motion for  
19 Indemnification; Plaintiffs' Motion to Strike, Plaintiffs' Motion for Extension of Time; Plaintiffs' Rule  
20 60 Motion for Relief from Orders; Plaintiffs' Motion for Delay of Orders Pending Rule 60 Motion  
21 Outcome & Response Against Attorney Fees & Costs; Plaintiffs' Local Rule 10 Motion to Strike  
22 Defendants' Summary Judgment Motion & Motion for Rule 11 Sanctions & Motion for Extension of  
23 Time to Answer the Summary Judgment Brief; Plaintiffs' Motion, Ordering GLA Respond to Discovery  
24 of Interrogatories, Reply against Defendants' Extension Motion, Reply against Motion to Proceed on  
25 SJM & Reply for Sanction Motion; and Plaintiffs' Motion for Order Reestablishing Parties to the  
26 Complaint.  
27  
28

1 The GLA has endeavored to resolve this case by filing for summary judgment. Clearly the  
2 “avalanche” of motions came from the Plaintiffs, primarily filed after the GLA’s MSJ. The delay in  
3 resolving the case has stemmed from Plaintiffs’ attempts to strike, sanction, supposedly conduct  
4 discovery, and generally do anything but address the merits of the GLA’s MSJ.

5 Any delay in discovery has come from Plaintiffs. Plaintiffs had depositions scheduled in June  
6 but canceled them on their own initiative. Plaintiffs improperly tried to subpoena two witnesses for  
7 depositions in September, and vigorously resisted the GLA’s Motion to Quash. After those depositions  
8 were quashed, the GLA offered multiple dates for depositions in October. In a complete reversal from  
9 their insistence the depositions must take place, Plaintiffs responded saying they now did not know if  
10 they would do oral depositions. (See Exhibits D and E). Plaintiffs filed their amended complaint in  
11 March of 2013 yet they accuse the GLA of delaying discovery when they waited until October of 2014  
12 to send interrogatories, and requests for admission. Accusing the GLA of delay is absurd.  
13  
14

15 Plaintiffs reiterate arguments already made about the GLA’s MSJ being scandalous and too long  
16 as well as the sanctions they received for imposing an undue burden. As argued above, and in numerous  
17 other responses to Plaintiffs’ prior motions, Plaintiffs have no grounds for requesting sanctions.  
18 Plaintiffs have also failed to comply with the requirements of Mont. R. Civ. P. 37 in moving for  
19 sanctions for alleged discovery abuse. Plaintiffs are the parties responsible for causing delay in the  
20 resolution of this case. The GLA would like nothing better than to have oral arguments on its MSJ so  
21 the Court can issue a ruling which the GLA believes would resolve all issues in GLA’s favor.  
22  
23

#### 24 CONCLUSION

25 For the foregoing reasons, Plaintiffs’ Motion, Ordering GLA Respond to Discovery of  
26 Interrogatories, Reply against Defendants’ Extension Motion, Reply against Motion to Proceed on SJM  
27 & Reply for Sanction Motion should be denied. Further, the Court should determine that Plaintiffs’  
28

1 three motions to strike the GLA's MSJ constitute adequate opportunity for the Plaintiffs to respond and  
2 deem the MSJ ready for oral arguments.

3 DATED this 16th day of December, 2014.

4 BROWN LAW FIRM, P.C.

5  
6 BY 

7 Michael P. Heringer  
8 Seth M. Cunningham  
9 The Brown Law Firm, PC  
10 *Attorneys for Glastonbury*  
11 *Landowners Association, Inc.*  
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CERTIFICATE OF SERVICE

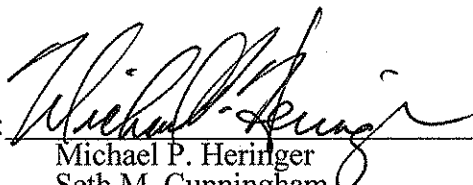
I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 16~~th~~ day of December, 2014:

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

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

Alanah Griffith  
Pape & Griffith, PLLC  
26 E. Mendenhall  
Bozeman, MT 59715  
*Attorneys for Respondents Glastonbury  
Landowners Association, Inc.*

Judge David Cybulski  
573 Shippe Canyon Road  
Plentywood, MT 59254

By:   
Michael P. Heringer  
Seth M. Cunningham  
The Brown Law Firm, PC

1 Michael P. Heringer  
2 Seth M. Cunningham  
3 BROWN LAW FIRM, P.C.  
4 315 North 24<sup>th</sup> Street  
5 P.O. Drawer 849  
6 Billings, MT 59103-0849  
7 Tel (406) 248-2611  
8 Fax (406) 248-3128

9 Alanah Griffith  
10 Pape & Griffith, PLLC  
11 1184 N. 15<sup>th</sup>, Ste. 4  
12 Bozeman, MT 59715  
13 (406) 522-0014  
14 Fax (406) 585-2633  
15 *Attorneys for Respondents Glastonbury*  
16 *Landowners Association, Inc.*

17 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

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

20 Plaintiffs,

21 v.

22 GLASTONBURY LANDOWNERS  
23 ASSOCIATION, INC. & CURRENT BOARD  
24 OF DIRECTORS,

25 Defendants.

Cause No.: DV-11-114

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' AMENDED REQUEST FOR  
DEFENDANT ADMISSIONS**

26 TO: Plaintiffs Daniel and Valery O'Connell:

27 Defendants respond to Plaintiffs' "Amended Request for Defendant Admissions" as follows:

28 **DEFENDANTS OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Defendants object to Plaintiffs' statement: "Plaintiffs' as GLA Director and members of the  
GLA Association..." Neither Plaintiff Daniel K. O'Connell nor Plaintiff Valery A. O'Connell are  
"GLA Directors."

Defendants object to Plaintiffs' inclusion of instructions for discovery and definitions to the  
extent they conflict or impose duties greater than the Montana Rules of Civil Procedure.

**EXHIBIT**

**A**

1 Defendants object to Plaintiffs' definition of "aggregate" as this is the definition they wish to  
2 impose which is not supported by the plain meaning of the word or the GLA Covenants. The definition  
3 of "aggregate" as used in the Covenants is an issue in this case, and Defendants disagree with Plaintiffs'  
4 interpretation of the term.

5 Defendants object to Plaintiffs' definition of "Defendant" as it is clearly contrary to Montana  
6 law and includes persons not a party to this lawsuit.

7  
8 **DEFENDANTS' ANSWERS TO PLAINTIFFS' AMENDED REQUESTS FOR ADMISSION**

9 **Request 1.** Admit that, except for budget report(s), project review(s), and agenda(s), the only way for  
10 GLA members to get other GLA documents is to make a written request to the GLA Board.

11 **ANSWER:** Deny. The Articles, By-laws, Master Plan, Covenants and Standards are posted on  
12 the GLA website along with policies, newsletters, board and committee member lists, forms and  
13 documents relating to litigation even though nothing in the GLA governing documents requires this—  
14 however, it is done as a service to members. A binder of meeting minutes is available for members for  
15 inspection at board meetings. Members are also given personal account statements upon verbal request.

16  
17 **Request 2.** Admit that since October 2012, O'Connell Members made written requests as members for  
18 requested GLA documents pursuant to the 2012 settlement agreement..[sic]

19  
20 **ANSWER:** Deny. The O'Connells have made several written requests that either ignored the  
21 terms of the Settlement Agreement which requires requests to be made according to the Montana Non-  
22 Profit Corporation Act and the GLA By-Laws.  
23  
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1 **Request 3.** Admit that the GLA Board since October 2012 withheld or denied such requested  
2 documents to its members-O'Connells that were requested & allowed under 2012 settlement agreement.

3 **ANSWER:** Deny. The GLA Board has not withheld or denied requested documents to the  
4 O'Connells that they were entitled to receive. They have been told by legal counsel that in accordance  
5 with Montana law, they are to pay the reasonable costs of labor and materials incurred by the GLA in  
6 fulfilling document requests, and they refuse to do so. They currently owe \$60 for a document request  
7 filled in the summer of 2012. Since this time, the GLA Board has provided documents to the  
8 O'Connells even when the O'Connells failed to follow the procedure set forth in the settlement  
9 agreement and in Montana law.  
10

11 **Request 4.** Admit that the GLA Board denied to its members-O'Connells any of the settlement  
12 agreement documents\* quoted & cited below as requested (**per §35-2-906 MCA**) via email by the  
13 O'Connells **starting** June 28<sup>th</sup>, 2014:  
14

15 \*"[sic] GLA member complaint/suggestion letters to the Board" for the last 36 months[sic]

16 \*"[sic] GLA communications with members" (per §35-2-906 MCA called "resolutions adopted by its  
17 board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of  
18 members.")  
19

20 \*"[sic] GLA member account balances" (per §35-2-906 MCA called "accounting records" and  
21 "financial statements.")

22 \*"[sic] GLA payment plans with members" (per §35-2-906 MC[sic] called "accounting records" and  
23 "financial statements;" or else called "resolutions adopted by its board of directors relating to the  
24 characteristics, qualifications, rights, limitations, and obligations of members.")  
25  
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1 \*"[sic] GLA Board Committee minutes" & Board "closed secession[sic]" meeting minutes"[sic] or  
2 "confidential Board meetings" for the last 36 months (per §35-2-906 MCA called "minutes of  
3 meetings.")

4 **ANSWER:** Deny. The Settlement Agreement does not include the documents in request #4.  
5 Further, Montana law and the GLA governing documents do not require disclosure all of the documents  
6 in request #4. The O'Connells misinterpret Montana law and erroneously label certain types of records  
7 as something they are not. When the O'Connells submitted a proper request that complied with the  
8 Montana Non-Profit Corporation Act and GLA governing documents, the GLA made available for  
9 inspection and copying its financial information and other documents on June 28, 2014 and July 8,  
10 2014. The O'Connells had two separate days to inspect and copy documents in addition to documents  
11 received by mail or email.  
12

13  
14 **Request 5.** Admit that for year(s): 2010, or 2011, or 2012, or 2013, the GLA Board prior to making  
15 any new Rules or Regulations, or taking any action to enforce any of the Covenants, Bylaws, Rules or  
16 Regulations failed to give its members due process/notice requirements pursuant to GLA Bylaw XI(C).

17  
18 **ANSWER:** Deny. To the best of its knowledge and ability, the GLA has followed the By-laws  
19 regarding due process notice.

20 **Request 6.** Admit that the GLA Board from January 2009 through September 2011 failed to give  
21 O'Connell & members receipts & expenditure statements per Bylaw VIII.F &H:[sic]

22  
23 **ANSWER:** Deny. The receipts and expenditure statements for 2011, 2012, and 2013 were  
24 mailed to members. For 2009 and 2010 the receipts and expenditure statements were available to  
25 members upon request. Daniel O'Connell was a board member from November 2009 through August  
26 2011, and the receipts and expenditures statement was available to him as a board member as well.  
27  
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1 **Request 7.** Admit that from 2010 through 2013, GLA yearly collected less than \$18,000 total member  
2 assessments from members owning HIGH South Glastonbury lots or residences accessible by Hercules  
3 Road, Polaris Road, or Sagittarius Roads (High South Glastonbury roads).

4 **ANSWER:** The GLA cannot truthfully admit or deny this request for admission because it lacks  
5 knowledge or information of assessments collected based on ownership in High South Glastonbury.

6 This type of information is not maintained or calculated by the GLA. Further, the GLA cannot  
7 determine which parcels Plaintiffs are including in the term High South Glastonbury. The GLA has  
8 made reasonable inquiry into its financial records maintained according to generally acceptable  
9 accounting practices and those records are insufficient to enable the GLA to admit or deny this request.  
10

11 **Request 8.** Admit that the[sic] in the calendar year 2010, GLA Board spent more than \$12,000 member  
12 assessments for grading (labor and costs), road repair (labor & costs), snowplowing (labor & cost),  
13 weed spraying (labor and costs) to maintain Hercules Road & Polaris Road & Sagittarius Roads (High  
14 South Glastonbury roads).

15 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to grading,  
16 snowplowing, and weed spraying because it lacks knowledge or information of expenditures for these  
17 based on particular roads in the community. This type of information is not maintained or calculated by  
18 the GLA. Specific road repairs such as culvert replacements are individually tracked, but repairs for  
19 these in 2010 came nowhere near \$12,000. The GLA has made reasonable inquiry into its financial  
20 records maintained according to generally acceptable accounting practices and those records are  
21 insufficient to enable the GLA to admit or deny this request.  
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1 **Request 9.** Admit that the[sic] in calendar year 2011 GLA Board spent more than \$12,000 in member  
2 assessments for grading (labor and costs), road repair (labor & costs), snowplowing (labor & cost),  
3 weed spraying (labor and costs) to maintain Hercules Road & Polaris Road & Sagittarius Roads (High  
4 South Glastonbury roads).

5 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to grading,  
6 snowplowing, and weed spraying because it lacks knowledge or information of expenditures for these  
7 based on particular roads in the community. This type of information is not maintained or calculated by  
8 the GLA. Specific road repairs such as culvert replacements are individually tracked, but repairs for  
9 these in 2011 came nowhere near \$12,000. The GLA has made reasonable inquiry into its financial  
10 records maintained according to generally acceptable accounting practices and those records are  
11 insufficient to enable the GLA to admit or deny this request.  
12

13  
14 **Request 10.** Admit that the[sic] in calendar year 2012, GLA Board spent more than \$12,000 member  
15 assessments for grading (labor and costs), road repair (labor & costs), snowplowing (labor & cost),  
16 weed spraying (labor and costs) to maintain Hercules Road & Polaris Road & Sagittarius Roads (High  
17 South Glastonbury roads).

18  
19 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to grading,  
20 snowplowing, and weed spraying because it lacks knowledge or information of expenditures for these  
21 based on particular roads in the community. This type of information is not maintained or calculated by  
22 the GLA. Specific road repairs such as culvert replacements are individually tracked, but repairs for  
23 these in 2012 came nowhere near \$12,000. The GLA has made reasonable inquiry into its financial  
24 records maintained according to generally acceptable accounting practices and those records are  
25 insufficient to enable the GLA to admit or deny this request.  
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1  
2 **Request 11.** Admit that the[sic] in calendar year 2013, GLA Board spent more than \$12,000 member  
3 assessments for grading (labor and costs), road repair (labor & costs), snowplowing (labor & cost),  
4 weed spraying (labor and costs) to maintain Hercules Road & Polaris Road & Sagittarius Roads (High  
5 South Glastonbury roads).

6  
7 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to grading,  
8 snowplowing, and weed spraying because it lacks knowledge or information of expenditures for these  
9 based on particular roads in the community. This type of information is not maintained or calculated by  
10 the GLA. Specific road repairs such as culvert replacements are individually tracked, but repairs for  
11 these in 2013 came nowhere near \$12,000. The GLA has made reasonable inquiry into its financial  
12 records maintained according to generally acceptable accounting practices and those records are  
13 insufficient to enable the GLA to admit or deny this request.

14  
15 **Request 12.** Admit that the GLA Board from 2010 through 2013 did NOT utilize the GLA website to  
16 post member payments, notices, newsletters; which actions cost money to print, mail, & labor costs (to  
17 send out these member payments, notices, newsletters).

18  
19 **ANSWER:** Deny. The GLA website is not required by Montana law or the GLA governing  
20 documents. However, the GLA created a website in the year 2002 as a service to members. Through  
21 volunteers and some paid contractors the website has evolved and has provided information and  
22 documents since its creation. The GLA does not send out member payments. Member statements and  
23 notices are mailed pursuant to the GLA governing documents and Montana law. Newsletters are  
24 available both by the website and mailed because not all members have internet access.  
25  
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1 **Request 13.** Admit that regarding request 12 above, GLA Board spent approx. or more than two  
2 thousand dollars (to print, postage costs, labor costs) to send GLA members all notices, payment  
3 invoices, newsletters via US Postal service[sic] U.S. Mail.

4 **ANSWER:** Admit. Between 2010 and 2013 the GLA spent over \$2,000 on postage fulfilling the  
5 requirements of the GLA Bylaws and Montana law which govern what information needs to be mailed  
6 to members.  
7

8 **Request 14.** Admit that in the last few years, GLA Directors Rich Spallone, Paul Rantallo[sic] Alyssa  
9 Allen, & Gerald Dubiel performed services for the GLA nonprofit organization and (c)[sic] received  
10 compensation in excess of expenses incurred to perform such services.

11 **ANSWER:** Deny. The GLA paid the invoices submitted for services rendered in capacities  
12 other than as Directors.  
13

14 **Request 15.** Admit that the GLA Board paid GLA assessments to Director Rich Spallone for such  
15 Director doing specific duties for the GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or  
16 2013.

17 **ANSWER:** Deny. Rich Spallone was not paid for Director duties. Rich Spallone was paid for  
18 snow removal as an independent contractor which is a service rendered in a capacity other than as a  
19 Director.  
20

21 **Request 16.** Admit that the GLA Board paid GLA assessments to Director Rich Spallone at a profit (in  
22 excess of expenses incurred to perform such services) for such Director doing specific duties for the  
23 GLA from 2009, and/or 2010, and/or 2011, and/or 2012 and/or 2013.

24 **ANSWER:** Deny. Rich Spallone was not paid for Director duties. Rich Spallone or R&B  
25 Builders was paid reasonable compensation for snow removal as an independent contractor which is a  
26 service rendered in a capacity other than as a Director. The GLA cannot truthfully admit or deny this  
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1 request in regards to profit because the GLA is not privy to Mr. Spallone's or R&B Builders's operating  
2 expenses, labor, and tax information which would be necessary to calculate profit, if any. The GLA paid  
3 Rich Spallone's or R&B Builders's reasonable invoices for services rendered. The GLA has made  
4 reasonable inquiry into its financial records maintained according to generally acceptable accounting  
5 practices and those records are insufficient to enable the GLA to admit or deny this request in regards to  
6 Mr. Spallone's or R&B Builders's profit.  
7

8 **Request 17.** Admit that the GLA Board paid GLA assessments to Director Paul Rantallo[sic] for such  
9 Director doing specific duties for the GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or  
10 2013.

11 **ANSWER:** Deny. Paul Ranttalo was not paid for Director duties. Paul Ranttalo was paid for  
12 road repair and other work as an independent contractor which is a service rendered in a capacity other  
13 than as a Director.  
14

15 **Request 18.** Admit that the GLA Board paid GLA assessments to Director Paul Rantallo[sic], a profit  
16 (in excess of expenses incurred to perform such services) for such Director doing specific duties for the  
17 GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or 2013.

18 **ANSWER:** Deny. Paul Ranttalo was not paid for Director duties. Mr. Ranttalo was paid  
19 reasonable compensation for repair work and other work as an independent contractor which is a service  
20 rendered in a capacity other than as a Director. The GLA cannot truthfully admit or deny this request in  
21 regards to profit because the GLA is not privy to Mr. Ranttalo's operating expenses, labor, and tax  
22 information which would be necessary to calculate profit, if any. The GLA paid Mr. Ranttalo's  
23 reasonable invoices for services rendered. The GLA has made reasonable inquiry into its financial  
24 records maintained according to generally acceptable accounting practices and those records are  
25 insufficient to enable the GLA to admit or deny this request in regards to Mr. Ranttalo's profit.  
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1 **Request 19.** Admit that the GLA Board paid GLA assessments to Director Alyssa Allen for such  
2 Director doing specific duties for the GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or  
3 2013.

4 **ANSWER:** Deny. Ms. Allen was not paid for Director duties. Ms. Allen or Angelis Design was  
5 paid for administrating and managing GLA affairs as an independent contractor which is a service  
6 rendered in a capacity other than as a Director.  
7

8 **Request 20.** Admit that the GLA Board paid GLA assessments to Director Alyssa Allen a profit (in  
9 excess of expenses incurred to perform such services) for such Director doing specific duties for the  
10 GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or 2013.

11 **ANSWER:** Deny. Ms. Allen was not paid for Director duties. Ms. Allen or Angelis Design was  
12 paid reasonable compensation for administrating and managing GLA affairs as an independent  
13 contractor which is a service rendered in a capacity other than as a Director. The GLA cannot truthfully  
14 admit or deny this request in regards to profit because the GLA is not privy to Ms. Allen's or Angelis  
15 Design's operating expenses, labor, and tax information which would be necessary to calculate profit, if  
16 any. The GLA paid Ms. Allen's or Angelis Design's reasonable invoices for services rendered. The  
17 GLA has made reasonable inquiry into its financial records maintained according to generally  
18 acceptable accounting practices and those records are insufficient to enable the GLA to admit or deny  
19 this request in regards to Ms. Allen's or Angelis Design's profit.  
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1 **Request 21.** Admit that the GLA Board paid GLA assessments to Director Gerald Dubiel for such  
2 Director doing specific duties for the GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or  
3 2013.

4 **ANSWER:** Deny. Mr. Dubiel was not paid for Director duties. Mr. Dubiel was paid for his  
5 work as an independent contractor in 2012 and then an employee of the GLA in 2013 for snow removal.  
6 Deny that he was paid in other year in any other capacity.  
7

8 **Request 22.** Admit that the GLA Board paid GLA assessments to Director Gerald Dubiel, a profit (in  
9 excess of expenses incurred to perform such services) for such Director doing specific duties for the  
10 GLA from 2009, and/or 2010, and/or 2011, and/or 2012, and/or 2013.

11 **ANSWER:** Deny. Mr. Dubiel was not paid for Director duties. Mr. Dubiel was paid reasonable  
12 compensation for his work as an independent contractor in 2012 and then an employee of the GLA in  
13 2013 for snow removal. Deny that he was paid in other year in any other capacity. Deny this request in  
14 regards to profit when Mr. Dubiel was paid as an employee paid with wages because he would not have  
15 profit in the sense Plaintiffs are using the term. The GLA cannot truthfully admit or deny this request in  
16 regards to profit when Mr. Dubiel was paid as an independent contractor because the GLA is not privy  
17 to Mr. Dubiel's operating expenses, labor, and tax information which would be necessary to calculate  
18 profit, if any. The GLA paid Mr. Dubiel reasonable compensation for services rendered. The GLA has  
19 made reasonable inquiry into its financial records maintained according to generally acceptable  
20 accounting practices and those records are insufficient to enable the GLA to admit or deny this request  
21 in regards to Mr. Dubiel's profit.  
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1 Request 23. Admit that from 2009, and/or 2010, and/or 2011, and/or 2012, and/or 2013, the GLA  
2 Board failed to get written bids from other competitors for duties paid for by GLA assessments for  
3 duties done by one or more GLA Directors (Alyssa Allen, Gerald Dubiel, Rich Spallone, Paul  
4 Rantallo[sic]).

5 ANSWER: Deny. Deny in regards to the work done by Alyssa Allen or Angelis design because  
6 other bids were solicited and another contractor worked for a time performing similar work. Deny in  
7 regards to the work done by Gerald Dubiel because he was not a contractor but an employee in 2013  
8 and other people were free to apply for the job. Deny in regards to the work done by Mr. Dubiel when  
9 he was an independent contractor because other contractors were solicited for snow removal and other  
10 contractors have performed snow removal for the GLA. Deny in regards to the work done by Rich  
11 Spallone or R&B Builders because other contractors were solicited for snow removal and other  
12 contractors have performed snow removal for the GLA. Deny in regards to the work done by Paul  
13 Ranttalo because other contractors were solicited for repair work and other contractors have performed  
14 repair work for the GLA. Over the years, the board has regularly informed the membership about  
15 various job needs at meetings, through the newsletter and announcements. Work was awarded based on  
16 best price and the ability to do the work. Often there was only one interested party. Further, the GLA  
17 alleges the By-laws do not require written bids or even verbal bids. Due to timeliness of circumstances,  
18 some work is performed by whoever can be found in a timely fashion and has the equipment and/or  
19 expertise to perform the work.  
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1 **Request 24.** Admit that the GLA Board does not allow anyone but GLA Board members to attend its  
2 so called "closed session" meetings without GLA Board's permission rarely given to its members.

3 **ANSWER:** Admit that pursuant to Bylaw Article VI.F, the GLA Board deals with confidential  
4 matters in closed sessions. For example, confidential matters include discussions of ongoing litigation,  
5 discussions of employment matters, and other issues deemed confidential at the discretion of the Board.  
6 Persons other than the Board members attend these sessions for specific purposes when needed or  
7 requested.  
8

9 **Request 25.** Admit that the GLA Board deny[sic] its members-the O'Connells to see or copy GLA  
10 Board meeting minutes from "closed session" (or private) Board meetings after O'Connells made  
11 discovery request(s) and member request(s) for such minutes.  
12

13 **ANSWER:** Deny as stated. There are some closed session meeting minutes which have  
14 confidential information which have not been redacted that are not available to members. However,  
15 some closed sessions dealing with confidential matters held pursuant to By-law Article VI.F are  
16 included in Board meeting minutes which are available to members because the descriptions of what  
17 was discussed are described generally so as not to violate confidentiality.  
18

19 **Request 26.** Admit that within the notebook where the GLA says it keeps Board meeting minutes for  
20 its members to see them, such minutes from "closed session" meetings are absent from this notebook.

21 **ANSWER:** Deny. Closed sessions dealing with confidential matters held pursuant to Bylaw  
22 Article VI.F are included in Board meeting minutes which are available to members. However,  
23 descriptions of what was discussed are described generally so as not to violate confidentiality. If the  
24 minutes contain protected, confidential matters then they are redacted.  
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1 **Request 27.** Admit that in year(s) 2010, and/or 2011, and/or 2012, and/or 2013, the GLA Board did not  
2 take GLA committee minutes reflecting all committee members attending and the actions taken.

3 **ANSWER:** Deny. The committees take their own meeting minutes, not the GLA Board.  
4 Committees then give a report at the monthly Board meeting regarding committee meeting attendance  
5 and any actions taken which are then incorporated into the monthly Board meeting minutes.  
6

7 **Request 28.** Admit that GLA Defendants delayed O'Connells having such documents for nine months  
8 for written document request emailed and dated October 7, 2012 and October 11, 2012 to GLA Board  
9 and Alannah Griffith.

10 **ANSWER:** Deny. The O'Connells consistently made defective requests that were not in good  
11 faith, not for a proper purpose, failed to describe with reasonable particularity the records they wished to  
12 inspect, and failed to connect the records with a proper purpose. Further, the O'Connells refused to pay  
13 the reasonable costs of labor and material for requests of documents. The O'Connells were not entitled  
14 to the requested documents to under Montana law and the GLA governing documents. When the  
15 O'Connells finally submitted a proper request and agreed to inspect and provide their own means  
16 copying, the requested records were made available on June 28, 2014 and July 8, 2014.  
17  
18

19 **Request 29.** Admit that GLA Defendants had actual knowledge of O'Connells document requests  
20 emailed to GLA Board and Brown Law Firm and dated: December 27, 2012, and/or June 8<sup>th</sup>, 2014,  
21 and/or June 11<sup>th</sup>, 2014, and/or July 7<sup>th</sup>, 2014, and/or July 12<sup>th</sup>, 2014, and/or July 29<sup>th</sup>, 2014, and/or  
22 September 26, 2014 document requests.  
23

24 **ANSWER:** Deny. The emails were defective requests that were not in good faith, not for a  
25 proper purpose, failed to describe with reasonable particularity the records they wished to inspect, and  
26 failed to connect the records with a proper purpose. Further, the O'Connells refused to pay the  
27 reasonable costs of labor and material for requests of documents. The O'Connells were not entitled to  
28

1 the requested documents to under Montana law and the GLA governing documents. When the  
2 O'Connells finally submitted a proper request and agreed to inspect and provide their own means  
3 copying, the requested records were made available on June 28, 2014 and July 8, 2014.

4 **Request 30.** Admit that, for all seven O'Connell GLA document requests in Request #29 above, were  
5 basically requests for the same or similar documents that were denied to O'Connells.  
6

7 ANSWER: Deny. The O'Connells consistently made defective requests that were not in good  
8 faith, not for a proper purpose, failed to describe with reasonable particularity the records they wished to  
9 inspect, and failed to connect the records with a proper purpose. Further, the O'Connells refused to pay  
10 the reasonable costs of labor and material for requests of documents. The O'Connells were not entitled  
11 to the requested documents to under Montana law and the GLA governing documents. The defective  
12 requests were not for the same or similar documents. When the O'Connells finally submitted a proper  
13 request and agreed to inspect and provide their own means copying, the requested records were made  
14 available on June 28, 2014 and July 8, 2014.  
15

16 **Request 31.** Admit that for the period beginning in November 2010 and ending in August 2014 there  
17 was no other GLA Director performing services for the GLA Defendants as a manager, managerial  
18 services, being treated as an independent contractor other than Alyssa Allen.  
19

20 ANSWER: Admit to the extent this request is asking if Ms. Allen or Angelis Design was paid  
21 for administrating and managing GLA affairs as an independent contractor which is a service rendered  
22 in a capacity other than as a Director starting in October 2010 through July 2013. Admit Ms. Allen was  
23 the only Director being paid for this type of work which was outside her capacity as a Director. Deny  
24 the remaining allegations in this request.  
25

26 **Request 32.** Admit that for the period beginning in November 2010 and ending in August 2014  
27 Director Alyssa Allen was paid with GLA assessments \$15.00 per hour that included profit to Alyssa  
28

1 Allen in return for her performing services for the GLA as a manager, and/or managerial services,  
2 and/or as an independent contractor for the GLA.

3 ANSWER: Admit to the extent this request is asking if Ms. Allen or Angelis Design was paid  
4 for administrating and managing GLA affairs as an independent contractor which is a service rendered  
5 in a capacity other than as a Director. Deny this request in regards to what profit to Alyssa Allen  
6 resulted from her work as an independent contractor. The premise of this request betrays a fundamental  
7 lack of understanding of how "profit" is figured. The GLA pays for services rendered, usually at or  
8 below market prices, and invoices from contractors do not contain information sufficient to calculate  
9 profit, if any.  
10

11 **Request 33.** Admit that for the period beginning in 2010 and ending 2013, Director Rich Spallone was  
12 paid with GLA assessments hourly wages that included profit to Rich Spallone to perform road  
13 maintenance services for the GLA, being treated as an independent contractor for the GLA.  
14

15 ANSWER: Admit to the extent this request is asking if Mr. Spallone was paid for snow removal  
16 as an independent contractor which is a service rendered in a capacity other than as a Director. Deny  
17 this request in regards to what profit to Mr. Spallone resulted from his work as an independent  
18 contractor. The premise of this request betrays a fundamental lack of understanding of how "profit" is  
19 figured. The GLA pays for services rendered, usually at or below market prices, and invoices from  
20 contractors do not contain information sufficient to calculate profit, if any. Further, Mr. Spallone was  
21 not paid hourly wages because he was an independent contractor, not an employee.  
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1 **Request 34.** Admit that all GLA Directors from 2012-2013 all had actual knowledge of the 2012  
2 Settlement Agreement with O'Connells; ; [sic] which "Settlement Agreement" says, "GLA... will  
3 provide a current GLA membership list to the O'Connells upon request [sic] twice a years[sic]" & "The  
4 GLA will provide O'Connells with all documents to which they are entitled pursuant to the Montana  
5 Non-Profit Corporation Act and GLA Bylaws[sic] upon request."  
6

7 **ANSWER:** Deny that the language from the Settlement Agreement is as Plaintiffs quote it.

8 Admit the GLA Directors were/are aware of the Settlement Agreement. Deny to the extent Plaintiffs are  
9 alleging the Board has violated the Settlement Agreement.

10 **Request 35.** Admit that the GLA Board from 2009-2011 refused to disclose to members how many  
11 votes each GLA Board candidate received (comparing January 2011 GLA newsletter that only gave the  
12 names of Board candidates reelected to the Board & January 2012 GLA newsletter that gave "Specific  
13 Voting Results" (# of votes each GLA Board candidate received)).  
14

15 **ANSWER:** Deny. From 2009-2011 the GLA Board did not publish vote tallies in the newsletter  
16 in order to protect the dignity of the losing candidates but tallies were available upon request. Therefore  
17 the GLA did not "refuse" to disclose them. Since 2011 tallies have been published in the newsletter.  
18

19 **Request 36.** Admit that the GLA Board of Directors, only after 2011, disclose to members how many  
20 votes each GLA Board candidate received (see "Specific voting results" in the attached Jan. 2012 GLA  
21 newsletter).  
22

23 **ANSWER:** Deny. Prior to 2012 the GLA Board did not publish vote tallies in the newsletter in  
24 order to protect the dignity of the losing candidates but tallies were available upon request. Therefore  
25 the GLA did not "refuse" to disclose them. Since 2011 tallies have been published in the newsletter.  
26 Further, in some years prior to 2012, the tallies were published or announced.  
27  
28

1 **Request 37.** Admit that the complaint claim for relief to remove GLA Board members was basically  
2 granted and now mute, because 10 out of 12 GLA Board of Directors, since September 2011, have  
3 either quit the Board or were voted out of office (excluding Paul Rantallosic] & Gerald Dubiel).

4 **ANSWER:** Deny. The Court has not granted the O'Connells anything they have requested in  
5 this case either in their original complaint or the amended complaint. If Plaintiffs feel their claims are  
6 now moot, then they have a legal obligation to dismiss their claims. The Directors have changed due to  
7 elections, routine resignations, and completion of terms—not as a result of Plaintiffs' claims. None of  
8 the original 12 directors who were on the board at the time of this original complaint has been "voted  
9 out of office" except for Daniel O'Connell who was removed by the members at a Special Meeting for  
10 that purpose on August 17, 2011.

11  
12  
13 (changed) **Request 38.** Admit that O'Connells won claims in complaint 193, and 220/164 cases  
14 showing these case claims had merit.

15 **ANSWER:** Deny. Case No. DV-2011-193 was settled between the GLA and Plaintiffs with no  
16 admission of liability by any party (see the Stipulated Settlement Agreement). Plaintiffs did not "win"  
17 that case—it was settled out of court. All of Plaintiffs claims in Case No. DV-2012-164 and Case No.  
18 DV-2012-220 were dismissed with prejudice by the District Court. The Montana Supreme Court  
19 affirmed the dismissal on appeal for both cases. Plaintiffs "won" no claims in those cases.

20  
21 (changed) **Request 39.** Admit for this complaint that Defendant Directors appear to have conceded on  
22 at least 2 complaint claims showing these claims have merit: 1) Bolen & Allen Oct. 2013 depositions  
23 Discovery Request #7 admit the GLA began to publish GLA election tallies in the GLA newsletter;" &  
24 2) Bolen & Allen Oct. 2013 depositions also admit that they never furnished members with "Receipts  
25 and Expenditures" until after this lawsuit claim was filed June 2011.  
26  
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1           **ANSWER:** The GLA cannot truthfully admit or deny this request because we have no record of  
2 the depositions of Richard Boleń and Alyssa Allen being taken in October of 2013. The GLA has made  
3 reasonable inquiry into its records and cannot find these depositions so it has insufficient information to  
4 admit or deny this request. However, to the extent this requests asks the GLA to admit any of Plaintiffs'  
5 claims, the GLA denies it.

6  
7 **Request 40.** Admit that the original June 2012 GLA / Minnick Management contract was amended  
8 which removed the statement that said, "Minnick Management" [agent] had "exclusive control over all  
9 GLA...parcels...;"[sic] which O'Connell complaint had claimed this original contract statement was  
10 against state law.

11           **ANSWER:** Deny. Plaintiffs misquote the June 2012 Minnick Management Contract. It never  
12 gave Minnick exclusive control over GLA parcels. Plaintiffs' claims otherwise were dismissed with  
13 prejudice. The contract has not been amended on the basis of Plaintiffs' claims.

14  
15 **Request 41.** Admit that at the October 2014 GA Board meeting, the GLA Board voted to "split" the  
16 GLA "road fund budget" in half giving South Glastonbury and North Glastonbury approx. the same  
17 amount of \$14,356 for grading called "road fund budget."

18           **ANSWER:** Deny. The GLA voted to divide the Road Saving Fund.

19  
20 **Request 42.** Admit that at the October 2014 GLA Board meeting, the GLA Board announced that they  
21 collect about \$8,000 more in GLA assessments from North Glastonbury members compared to South  
22 Glastonbury assessments collected.

23           **ANSWER:** Deny. There was a comment made by one Board member regarding the difference  
24 in amounts collected between North and South Glastonbury due to the greater number parcels with  
25 dwellings in North Glastonbury, but the actual difference has not been calculated or announced at a  
26 Board meeting.  
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1 **Request 43.** Admit that this (request #41) vote to “split” of the GLA “road fund budget” in half giving  
2 South Glastonbury and North Glastonbury approx. the same amount of \$14,356 for grading called “road  
3 fund budget” is NOT aggregate spending of the individual AND collective assessments (per Covenant  
4 8.01(h)), because the GLA admitted Oct. 2014 they collect about \$8,000 more in GLA assessments  
5 from North Glastonbury members compared to South Glastonbury member assessments collected.  
6

7 **ANSWER:** Deny. The O’Connell’s fundamental misunderstanding of the meaning of aggregate  
8 spending is covered in the Brief in Support of Motion for Summary Judgment. Aggregate spending as  
9 required by the GLA governing documents means the Association is not obligated to spend more on  
10 road maintenance than the total assessments it collects. Therefore the GLA is spending aggregate  
11 amount of assessments as required.  
12

13 **Request 44.** Admit that from 2010 through 2014, the GLA took action by written consent without a  
14 meeting via requesting email votes cast by 2/3rds GLA Board members.

15 **ANSWER:** GLA Board admits that it does follow Bylaw Article VI.J Action by Written  
16 Consent.  
17

18 **Request 45.** Admit to what the vote and actions(s) were about (from 2010 through 2014 when the GLA  
19 took action by written consent without a meeting via requesting email votes cast by 2/3rds GLA Board  
20 members).  
21

22 **ANSWER:** The GLA cannot admit or deny this request for admission because it is not phrased  
23 as a statement that can be admitted or denied. This request does not identify what votes and actions  
24 Plaintiffs want the GLA to admit or deny were done without a meeting via requesting email votes cast  
25 by 2/3rds of the GLA Board members.  
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1 (changed) **Request 46.** Admit that the GLA Board from 2013-2014 refused to give O'Connells  
2 requested financial records of delinquent members payment plans with the GLA & how much such  
3 delinquent member paid and owe in past due assessments.

4 **ANSWER:** Deny as stated. The GLA Board has provided past due assessment reports as well as  
5 lists of landowners with liens on their property due to unpaid assessments. Further, the list of eligible  
6 voters provided to Plaintiffs indicates whether a member is eligible to vote based on payment of  
7 assessments. Admit the GLA did not give Plaintiffs personal and confidential information relating to  
8 member's financial records.

10 (changed) **Request 47.** Admit that the GLA Board breached its duty and loyalty to the Association and  
11 members pursuant to GLA Article VIII of Incorporation (below) for claims above that mention:

12 GLA violation of a settlement agreement with O'Connells,  
13 GLA denial of its members due process/notice,  
14 GLA non-aggregate spending & refusal to utilize the website to post member payments,  
15 notices, newsletters.

17 **ANSWER:** Deny that the GLA Board has breached its duty and loyalty pursuant to the Articles  
18 of Incorporation for claims that mention GLA violation of a settlement agreement with O'Connells,  
19 GLA denial of its members due process/notice, GLA non-aggregate spending & refusal to utilize the  
20 website to post member payments, notices, newsletters. The GLA has always complied with the terms  
21 of the Settlement Agreement. The GLA provides members due process/notice as required. The GLA has  
22 not conducted non-aggregate spending as Plaintiffs claim but spends assessments in accordance with  
23 GLA governing documents. The GLA utilizes its website to post notices and newsletters, but does not  
24 post member payments on its website. In all its conduct, the GLA has not breached its duty and loyalty.  
25  
26  
27  
28

1 **Request 48.** Admit that since 2011, the GLA Board at GLA annual elections (when ballots are  
2 counted) told O'Connell(s) that they could not see GLA Board election ballots and/or GLA election  
3 proxies, and/or GLA election vote tally taken.

4 ANSWER: GLA admits that it maintains ballots and proxies as confidential because it conducts  
5 secret ballot elections and disseminating ballots and proxies would violate the voters' right to privacy.  
6

7 **Request 49.** Admit that since 2011, the GLA Board told O'Connell members that GLA annual election  
8 ballots for Board candidates are not to be seen by O'Connell members because these are "confidential"  
9 election ballots.

10 ANSWER: GLA admits that it maintains ballots and proxies as confidential because it conducts  
11 secret ballot elections and disseminating ballots and proxies would violate the voters' right to privacy.  
12 They are kept confidential from all members, including the O'Connells.  
13

14 **Request 50.** Admit that since 2011, the GLA Board denied O'Connell members discovery request to  
15 have any GLA annual Board election ballots or other voting records submitted by GLA members.

16 ANSWER: Deny. To the best of its knowledge, the GLA has not received a discovery request  
17 asking for election ballots and other voting records. If Plaintiffs ask for these items, the GLA objects to  
18 producing them. Whenever Plaintiffs have requested election ballots and other voting records other than  
19 as discovery requests, the GLA has declined to produce them as disseminating ballots and voting  
20 records (other than tallies which don't violate secret ballot principles) would violate the voters' right to  
21 privacy. Such documents are kept confidential from all members.  
22

23 DATED this 17<sup>th</sup> day of November, 2014.  
24

25 BROWN LAW FIRM/P.C.

26 By: 

27 Michael P. Heringer  
28 Seth M. Cunningham  
Attorneys for Glastonbury  
Landowners Association, Inc.

1 I attest that the foregoing answers are true and correct to the best of my knowledge.

2 Glastonbury Landowners Association, Inc.

3  
4 By: \_\_\_\_\_  
5 President, Glastonbury Landowners  
6 Association, Inc.

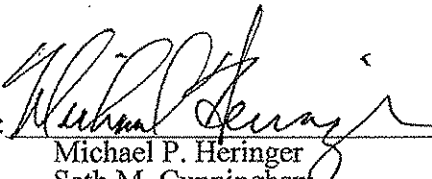
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1  
2 CERTIFICATE OF SERVICE

3 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,  
4 postage prepaid, and addressed as follows this 7<sup>th</sup> day of November, 2014:  
5

6 Daniel and Valery O'Connell  
7 PO Box 77  
8 Emigrant, MT 59027  
9 *Plaintiffs pro se*

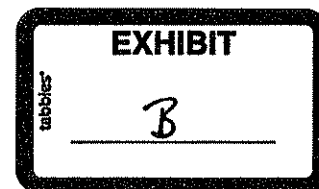
10 Daniel and Valery O'Connell  
11 PO Box 774  
12 Cayucos, CA 93430  
13 *Plaintiffs pro se*

14 By:   
15 Michael P. Heringer  
16 Seth M. Cunningham  
17  
18  
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21  
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26  
27  
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## Seth Cunningham

---

**From:** Daniel OConnell [dco@mac.com]  
**Sent:** Tuesday, December 02, 2014 9:18 AM  
**To:** Anna Robertus; GLA Mailbox  
**Subject:** Request for Admissions, second attempt



Date: December 2, 2014  
To: Brown Law Firm  
From: Dan and Val O'Connell  
Re: Request for Admissions, second attempt

This is a good faith attempt to obtain discovery without court action regarding request for admission answers from the GLA Inc. and GLA Board.

Defendants did not answer some of Plaintiffs' requests for admissions at Requests 7, 8, 9, 10, 11, 39, and 45. Plaintiffs for a second time request such answers, because the reasons given to refuse answer are either resolved below or factually disputed by Defendant GLA's own records, as follow:

**Requests #7:** Admit that from 2010 through 2013, GLA estimates that it yearly collected less than \$18,000 total in member assessments billed to members owning HIGH South Glastonbury lot numbers 57 through lots 109 accessible only by Hercules Road, Polaris Road, or Sagittarius Roads (**this Request rephrased for clarity**)

GLA failed to answer this request without knowing which member lots were considered. To answer this question, the specific lots numbers 57 through lots 109 in question were added. Also GLA member billing documents show how much assessments GLA yearly collects from each lot in South Glastonbury. Since the Request has been rephrased & explained to clarify an answer, please answer this request #7.

**Requests #8-11** rephrased below can be answered by the GLA using the GLA budget reports submitted for monthly Board meetings in these years cited that show "Road Work" and "Snow Removal" specifically for "South Glastonbury" & "North Glastonbury (example: attached GLA 2012 budget report for "Road work" & "Snow Removal"):

**Requests #8.** Admit that in year 2010, for both North and South Glastonbury combined total road expenses spent for "Road Work" and "Snow Removal," the GLA spent more than 50% of these combined total road expenses on South Glastonbury Roads for "Road Work" and "Snow Removal" (see GLA Budget line items: "A13. SG Road Work" and "A02B & A02C. South Glastonbury Snow Removal," and North Glast. Road expenses include GLA Budget line items: "A12.NG Road Work" and "A13. Road work" and "A02B. Snow Removal") (**Requests #8 rephrased for clarity**).

**Requests #9.** Admit that in year 2011, for both North and South Glastonbury combined total road expenses spent for "Road Work" and "Snow Removal," the GLA spent more than 50% of these combined total road expenses on South Glastonbury Roads for "Road Work" and "Snow Removal" (see GLA Budget line items: "A13. SG Road Work" and "A02B & A02C. South Glastonbury Snow Removal," and North Glast. Road expenses include GLA Budget line items: "A12.NG Road Work" and "A13. Road work" and "A02B. Snow Removal") (**Requests #9 rephrased for clarity**).

**Requests #10.** Admit that in year 2012, for both North and South Glastonbury combined total road expenses spent for "Road Work" and "Snow Removal," the GLA spent more than 50% of these combined total road expenses on South Glastonbury Roads for "Road Work" and "Snow Removal" (see GLA Budget line items: "A13. SG Road Work" and "A02B & A02C. South Glastonbury Snow Removal," and North Glast. Road expenses include GLA Budget line items: "A12.NG Road Work" and "A13. Road work" and "A02B. Snow Removal") (**Requests #10 rephrased for clarity**).

**Requests #11.** Admit that in year 2013, for both North and South Glastonbury combined total road expenses spent for “Road Work” and “Snow Removal,” the GLA spent more than 50% of these combined total road expenses on South Glastonbury Roads for “Road Work” and “Snow Removal” (see GLA Budget line items: “A13. SG Road Work” and “A02B & A02C. South Glastonbury Snow Removal,” and North Glast. Road expenses include GLA Budget line items: “A12.NG Road Work” and “A13. Road work” and “A02B. Snow Removal”) (**Requests #11 rephrased for clarity**).

**Request # 39:** Please admit, that for the first time after the Nov. 2011 elections, the GLA started to “publish GLA election vote tallies. (this Request has been rephrased for clarity.)

**Request 39.** Admit for this complaint that Defendant Directors appear to have conceded on at least 2 complaint claims showing these claims have merit: 1) Bolen & Allen Oct. 2013 depositions Discovery Request #7 admit the GLA began to publish GLA election tallies in the GLA newsletter;” & 2) Bolen & Allen Oct. 2013 depositions also admit that they never furnished members with “Receipts and Expenditures” until after this lawsuit claim was filed June 2011.”

Request #39 and quoted part has to do with the September 2013 written deposition answers from the GLA called, “Defendants’ Response to Plaintiffs’ Reply & More Partial Discovery Requested for Docs & Admissions.” The GLA can and should answer this Request #39 by referring to its “Discovery Request No.7” on page 7 of that document.

**Request #44.** Admit that from 2010 through 2014, the GLA took action by written consent without a meeting via requesting email votes cast by 2/3rds GLA Board members.

The GLA did NOT answer this Request #44 that asks the GLA Board to admit that they took votes by written consent via email without a meeting for these years. The GLA instead gave an unrelated answer that they “follow Bylaw Article VI.3....” Please answer Request #44 above with “admit” or “deny” and explain any denial.

**Request #45:** Please admit for these years 2010-2014, the GLA did not attach any email votes (as written consent) with the minutes of the proceedings of the Board after the GLA took action by written consent without a meeting via requesting email votes cast by 2/3rds GLA Board members (**this Request rephrased for clarity**).

GLA answer #45 claims they have no way to know what votes they took without a meeting via email. Since this Request has been rephrased to clarify an answer, please answer the above request #45.

# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw  
Christine M. Cole

December 12, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

## Via U.S. Mail and Email

Retired  
Rockwood Brown  
John Walker Ross  
Margy Bonner

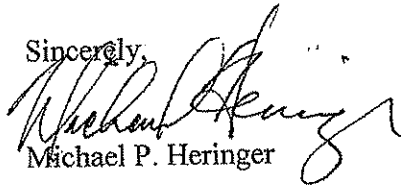
**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

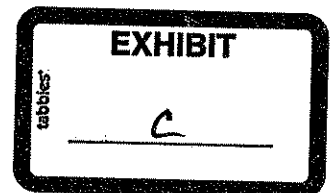
This letter is in response to your email dated December 2, 2014, with the subject: "Request for Admissions, second attempt." You allege the GLA did not answer some of the requests for admission. Your list rephrases requests 7, 8, 9, 10, 11, 39 (twice), 44, and 45 for clarity.

Rephrasing these requests changes them—effectively making them new requests for admission. The GLA will treat these as additional requests for admission. Therefore, the GLA has 30 days to respond to them pursuant to Mont. R. Civ. P. 36.

Sincerely,

  
Michael P. Heringer

MPH:amr



# BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
Phone: 406.248.2611 | Fax: 406.248.3128

John J. Russell  
Michael P. Heringer  
Guy W. Rogers  
Scott G. Gratton  
Kelly J.C. Gallinger  
Jeffrey T. McAllister  
Jon A. Wilson  
Seth M. Cunningham  
Shane A. MacIntyre  
Thomas R. Martin  
Andrew J. Miller  
Adam M. Shaw

October 14, 2014

Daniel and Valery O'Connell  
PO Box 77  
Emigrant, MT 59027  
[dko@mac.com](mailto:dko@mac.com)

Via U.S. Mail and Email

Retired

Rockwood Brown  
John Walker Ross  
Margy Bonner

**RE: O'Connell v. Glastonbury Landowners Association  
Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

This letter is in follow-up to our letter dated September 18, 2014. We have not heard back from you whether you wanted to schedule the depositions of Alyssa Allen and Janet Naclerio on October 20, 21, or 22. Nor have we received your pre-discovery disclosure pursuant to Rule 6 of the Montana Sixth Judicial District Court Rules and to the Court's Order dated September 8, 2014.

If we do not hear from you by close of business Wednesday, October 15, 2014, we will assume you do not want to schedule depositions for these dates.

Sincerely,



Michael P. Heringer

MPH:amr





## Seth Cunningham

---

**From:** Daniel OConnell [dko@mac.com]  
**Sent:** Tuesday, October 14, 2014 1:00 PM  
**To:** Anna Robertus  
**Subject:** Re: O'Connell v. GLA / October 14, 2014 correspondence

We are submitting requests for admissions today, and do not yet know if or when we will request oral depositions.

On Oct 14, 2014, at 11:34 AM, Anna Robertus <[ARobertus@BrownFirm.com](mailto:ARobertus@BrownFirm.com)> wrote:

Good morning, Mr. and Mrs. O'Connell:

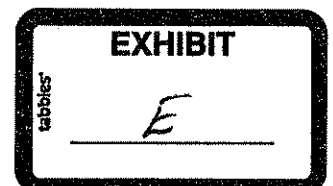
Please see the attached correspondence. The original letter has been placed in today's U.S. mail.

Thank you,  
Anna

Anna Robertus\*  
ASSISTANT TO MICHAEL HERINGER AND JEFFREY MCALLISTER  
<image003.png>  
315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849  
210 E. Pine Street, Suite 200 | Missoula, Montana 59802  
Phone: 406.248.2611 | Fax: 406.248.3128 | Direct Dial: 406.247.2817  
\*Not licensed to practice law

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<2014-10-14 To Dan & Valery O'Connell.pdf>



1 HON. DAVID CYBULSKI  
2 District Judge  
3 Fifteenth Judicial District  
4 573 Shippe Canyon Road  
5 Plentywood, Montana 59254  
6 (406) 286-5615

7 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

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

10 Plaintiffs,

11 v.

12 GLASTONBURY LANDOWNERS  
13 ASSOCIATION, INC. & Current GLA Board  
14 of Directors,

15 Defendants.

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

**ORDER DENYING PLAINTIFFS' MOTION,  
ORDERING GLA RESPOND TO  
DISCOVERY OF INTERROGATORIES,  
REPLY AGAINST DEFENDANTS'  
EXTENSION MOTION, REPLY AGAINST  
MOTION TO PROCEED ON SJM & REPLY  
FOR SANCTION MOTION**

16 THE COURT, having reviewed Plaintiffs' Motion, Ordering GLA Respond to Discovery of  
17 Interrogatories, Reply against Defendants' Extension Motion, Reply against Motion to Proceed on SJM  
18 & Reply for Sanction Motion and Defendant Glastonbury Landowners Association, Inc.'s (GLA)  
19 response in opposition, the file and the law, now makes the following findings and Order:

20 1. Plaintiffs' motion to require the GLA to respond to Plaintiffs' interrogatories and sanctions  
21 against the GLA is denied as the Court decided that issue by its December 4, 2014 Order and the issue  
22 is moot.

23 2. Plaintiffs' Motion to Strike the GLA's Motion and Brief in Support of Summary Judgment is  
24 denied. Plaintiffs' three motions to strike are deemed to be Plaintiffs' response to the GLA's Motion for  
25 Summary Judgment.  
26  
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1 3. Oral arguments regarding the GLA's Motion for Summary Judgment and all other pending  
2 motions will take place at \_\_\_\_\_ .m. on \_\_\_\_\_ in the \_\_\_\_\_  
3 County Courthouse.

4 4. Plaintiffs' multiple motions for sanctions are denied as Plaintiffs have not complied the  
5 processes for requesting sanctions under the applicable Rules of Civil Procedure nor have Plaintiffs  
6 given any grounds for sanctions even if they had followed the correct procedures.  
7

8 SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

9  
10  
11 HON. DAVID CYBULSKI, District Judge

12 cc: Daniel and Valery O'Connell  
13 Michael P Heringer  
14 Alanah Griffith  
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