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

13 DANIEL and VALERY O'CONNELL,

14 Plaintiffs,

15 v.

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

17 Defendants.

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

**DEFENDANTS' REPLY TO PLAINTIFFS'  
RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

18 COMES NOW the above named Defendants Glastonbury Landowners Association, Inc. (GLA)  
19 and submits this reply to Plaintiffs' response in opposition to Defendants' Motion for Summary  
20 Judgment.  
21

22 **PLAINTIFFS' BRIEF IS EIGHT MONTHS LATE**

23 The GLA filed its Motion and Brief Summary Judgment and Brief August 4, 2014. Plaintiffs  
24 waited until April of 2015 to file a response without ever asking for an extension from counsel or the  
25 Court. Plaintiffs simply state "Note: Discovery delays and recent health issues delayed this Reply."  
26 Plaintiffs' dilatory tactics should not be allowed, and their response should be stricken.  
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## SUMMARY OF PLAINTIFFS' ARGUMENT

1  
2 Plaintiffs Daniel and Valery O'Connell contend there are issues of material fact which preclude  
3 summary judgment and necessitate a jury trial. They claim the GLA has violated provisions of its  
4 governing documents yet they have produced no evidence of this. Plaintiffs take the position that eight  
5 of their claims for relief are disputed facts. Plaintiffs claim "genuine issues of material facts in dispute  
6 are all evidenced and supported by numerous attached Exhibits & affidavits." However, Plaintiffs have  
7 attached no affidavits to their response nor produced any evidence supporting their allegations. Simply  
8 pointing to the allegations of the complaint is not enough to establish genuine issues of material fact.  
9

10 The party moving for summary judgment must demonstrate no genuine issues of material fact  
11 exist. Upon such demonstration, the burden shifts to the non-moving party to prove, by more than mere  
12 denial or speculation, a genuine issue of material fact exists. *Bruner v. Yellowstone Co.*, 272 Mont. 261,  
13 264, 900 P.2d 901, 903 (1995). "Mere denial, speculation, or conclusory statements are insufficient to  
14 raise genuine issue of material fact." *Arnold v. Yellowstone Mountain Club, LLC*, 2004 MT 284, ¶ 15,  
15 323 Mont. 295, ¶ 15, 100 P.3d 137, ¶ 15. Further, an "opposing party's facts must be material and of  
16 substantial nature, not fanciful, frivolous, gauzy, nor merely suspicions." *Klock v. Town of Cascade*,  
17 284 Mont. 167, 174, 943 P.2d 1262, 1265 (1997).  
18  
19

20 The GLA has met its burden of demonstrating no genuine issues of material fact exist. Plaintiffs'  
21 claims all fail under a plain reading of the GLA governing documents or Montana law. The facts are not  
22 in dispute—what are in dispute is Plaintiffs' erroneous interpretations of the GLA governing documents  
23 and Montana law. Questions of law are the province of this Court, not the jury. Therefore, this Court  
24 may decide this matter on summary judgment without resorting to a jury trial.  
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1 **1. Plaintiffs' allegation the GLA has breached a settlement agreement is not a genuine issue of**  
2 **material fact.**

3 Plaintiffs have alleged the GLA has breached a settlement agreement. (See Agreement attached  
4 as Exhibit A). Plaintiffs take issue with the GLA's reliance on state law when responding to their  
5 requests to examine GLA records. They assert the settlement agreement does not require their requests  
6 be according to state law.

7 This blatantly ignores provision number one which states: "The GLA will provide O'Connells  
8 with all documents to which they are entitled pursuant to the Montana Non-Profit Corporation Act and  
9 GLA Bylaws upon request." Montana law is incorporated directly into the settlement agreement. It is a  
10 question of law for the Court to determine whether Plaintiffs' document requests must conform to the  
11 Montana Non-Profit Corporation Act, and the answer is that they must.

12 Plaintiffs also allege the GLA has refused to provide documents they request. However, they  
13 refuse to pay the reasonable costs of labor and materials for copies as allowed by Mont. Code Ann. §  
14 35-2-908(3). See Aff. Alyssa Allen at ¶ 4 (May 5, 2015). Whether or not Plaintiffs must pay the costs of  
15 copies is a question of law—not a question of fact.

16 Further, Plaintiffs take the position they are entitled to inspect every document the GLA  
17 possesses including confidential documents. Neither the Bylaws nor Montana law create such a right.  
18 The scope of a member's inspection rights is laid out in those documents, and it is the Court's province  
19 to interpret those documents and the law.

20 The GLA's Brief in Support of Its Motion for Summary Judgment lays out the scope of a  
21 member's inspection rights in detail, and it will not be repeated here. Suffice to say, Plaintiffs are  
22 limited on what they can inspect by the GLA Bylaws and Montana law. The root of the dispute is  
23 Plaintiffs' disagreement with the Bylaws and Montana law. Further, the GLA board has the power to  
24 interpret the provisions of the Bylaws, and it has done so reasonably.

1           Additionally, Plaintiffs fail to acknowledge that any request must be made in good faith and for  
2 a proper purpose describing with reasonable particularity the purpose and the records the member  
3 desires to inspect. Mont. Code Ann. § 35-2-907. They want the Court to give them *carte blanche* to  
4 have any record at any time which is contrary to the Bylaws and the law. Again, these are questions of  
5 law determined by interpretation of the Bylaws and Montana law. The GLA has demonstrated it has  
6 reasonably and correctly applied the Bylaws and the law to Plaintiffs' document demands. Plaintiffs  
7 have failed to overcome that evidence, and summary judgment is warranted.

8  
9           Plaintiffs also take issue with the GLA's request that they make discovery requests rather than  
10 demand to inspect records under the Bylaws or the Montana Non-Profit Corporation Act. Given the  
11 facts the Plaintiffs started this litigation and one of the claims is in regards to document requests, it is  
12 clearly more appropriate to engage in the discovery process which avoids confusion and creates a record  
13 of what has been produced.  
14

15           Plaintiffs steadfastly refused this request, brought their own copier, and rifled through the  
16 GLA's records on two occasions leaving no indication of what had been taken or what had been copied  
17 demonstrating the need to follow the discovery process rather than informal inspections. See Aff.  
18 Alyssa Allen at ¶ 5 (May 5, 2015).  
19

20           This very issue was addressed by Judge Jones in another property owner's association case. (See  
21 Order attached as Exhibit B). There Judge Jones granted a protective order forbidding requests to  
22 inspect or copy association records except in the case of formal discovery. Judge Jones acknowledged  
23 the Montana Non-Profit Corporation Act entitles members to inspect and copy certain record under  
24 specified conditions, but found,  
25

26           Because the parties are in litigation where access to the records and the content of the records is  
27 at issue, it is reasonable to require the parties exchange such records through formal channels of  
28 discovery. Doing so aids in identifying which records have been produced and the scope of the  
requests and avoids inadvertent duplicity of effort and expense. (Exhibit B at 2).

1 Judge Jones also sanctioned the Plaintiffs in that case for ignoring the association's request to use  
2 discovery. In the current case, the situation is the same.

3  
4 The GLA accommodated Plaintiffs' unreasonable requests on two occasions despite Plaintiffs'  
5 refusal to pay past costs of labor and materials. Allowing Plaintiffs to continually make inspection  
6 requests would have incurred duplicity of effort and expense which is why the GLA's counsel requested  
7 Plaintiffs use discovery. Doing so did not violate the settlement agreement. Plaintiffs filed this  
8 lawsuit—they cannot exempt themselves from the Rules of Civil Procedure.

9  
10 **2. Plaintiffs' allegation the GLA denies members due process/notice is not a genuine issue of  
11 material fact.**

12 Plaintiffs assert the GLA has violated notice requirements found in the Bylaws Art. XI.C.:

13 **Due Process.** Prior to making any new Rules or Regulations, or taking any action to enforce any  
14 of the Covenants, Bylaws, Rules or Regulations, the Association, acting through the Board of  
15 Directors and officers, shall provide reasonable written notice in accordance with Article V,  
16 paragraph D, to all of the Members (in the case of rule-making) or to all directly-affected  
17 Members (in the case of a proposed enforcement action) and a reasonable opportunity for any  
18 such Member to be heard and to give written or oral comment to the Board of Directors or its  
19 designee(s). Enforcement actions shall also include a reasonable fact-finding process whereby  
20 relevant information related to all sides of the issue will be gathered and evaluated.... (Exhibit C  
21 at 15).

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

23 Plaintiffs mistakenly assert "fact-finding" is required in all cases under Art. XI.C. Fact-finding is  
24 only required when taking enforcement action. Plaintiffs also mistakenly apply this provision to all  
25 GLA actions. It is limited to the making of new Rules or Regulations or actions taken to enforce the  
26 Covenants, Bylaws, or Regulations. Plaintiffs fail to cite any example where the GLA made a new Rule  
27 or Regulation or took action to enforce Covenants, Bylaws, or Regulations and failed to give notice.

28 In support of their argument, Plaintiffs raise two alleged instances of violation of the notice  
provision. First, Plaintiffs cite a conduct policy adopted in 2011 to prohibit recording board meetings.

1 Raising this issue is inappropriate and should not be considered by the Court because this same issue  
2 was resolved by settlement of DV-11-193. (See Exhibit A at ¶ 4). This policy was originally adopted  
3 because of Plaintiffs' recordation of meetings was disruptive and chilling. See Aff. Alyssa Allen at ¶ 3  
4 (May 5, 2015). This issue, among others, at Plaintiff's request was addressed by the settlement  
5 agreement. The GLA rescinded the policy without admission of liability, and Plaintiffs have not been  
6 denied the ability to record board meetings since the settlement agreement. The issue is *res judicata*,  
7 moot, and waived by Plaintiffs due to the settlement agreement, and they should not be allowed to re-  
8 litigate it.

10 Even if it was proper to raise this issue here, the policy does not fall under the notice provision.

11 Art. VI.B.10. gives the board the power to:

13 Adopt Rules and Regulations for the conduct of the affairs of the association and the enjoyment  
14 of the Members, provided that no rule or Regulation so adopted shall be in conflict with  
15 Montana law, the Covenants, the Articles of Incorporation or these Bylaws.... (Exhibit C at 6).

16 Delineated from this power is an additional power found at Art. VI.B.16. which gives the board the  
17 power to:

18 Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner that  
19 is not inconsistent with any provisions of the Covenants, Articles of Incorporation or these  
20 Bylaws. (Exhibit C at 6).

21 Clearly, the Rules and Regulations contemplated by Art. XI.C. are different from rules or policies which  
22 are limited to the conduct of meetings. GLA Bylaws Article VI.P. gives a simple, bare outline of the  
23 order of business to be used at board meetings. Clearly, it is within the discretion of the board to adopt  
24 rules for the conduct of meetings. Plaintiffs originally raised objections to the adoption of Roberts Rules  
25 of Order in their Amended Complaint. The recording policy is no different. The board has the power to  
26 adopt policies for the conduct of board meetings.

1           Given the distinction between “Rules and Regulations” and rules for the conduct of meetings, it  
2 is a reasonable interpretation that before adopting rules for meeting conduct, no notice under Art. XI.C  
3 need be given. Such interpretation is within the discretion of the board. Art. XII.A. (Exhibit C at 16).

4           The second alleged violation of the notice provision was the GLA’s practice of newly elected  
5 board not officially taking on the duties of board members until the first board meeting after annual  
6 elections. Board members are elected in November each year with half of the seats up for election. The  
7 next board meeting takes place in December. For reasons of practicality, the incoming board members  
8 do not begin board duties until the first board meeting after the election. See Aff. Alyssa Allen at ¶ 6  
9 (May 5, 2015).  
10

11           Plaintiffs claim this practice violates the notice provision and the Bylaws (again a claim not  
12 made in the Amended Complaint). This practice is not something that falls under the notice provision as  
13 it is not a “Rule or Regulation” nor an action to enforce the Covenants, Bylaws, Rules or Regulations. It  
14 is simply a practice done to aid continuity and for practical reasons. One of the most important roles of  
15 the board is to implement snow removal. See Aff. Alyssa Allen at ¶ 6 (May 5, 2015). Having a period of  
16 time where the board is hampered in its ability to coordinate snow removal because new board members  
17 are not oriented, appointed to committees (such as the road committee), assigned responsibilities, or  
18 officers have not been elected would simply harm the GLA’s ability to serve its members.  
19

20           Plaintiffs claim the practice violates the Bylaws, but their interpretation is faulty. Art. VI.D.  
21 states directors “shall be elected for terms of two years each...” (Exhibit C at 7). Further: “The  
22 members of the Board shall hold office until their respective successors have been elected by the  
23 Members and duly qualify.” (Exhibit C at 7).  
24

25           By remaining in office until the next official board meeting, board members are not getting an  
26 extra 30 days in office as Plaintiffs claim. Each board member is given a two year term; the two years  
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28

1 begins on the first board meeting after the election in December and ends two years later in December.  
2 Additionally, the Bylaws do not require an immediate step-down. The Bylaws require a new board  
3 member to get elected and “duly qualify.” The Bylaws are silent on what “duly qualify” means, and the  
4 board has the power to interpret and apply the Bylaws as it sees fit.

5 Here, the board has determined a new board member duly qualifies by election and by  
6 assumption of board or committee duties at the next board meeting. See *Aff. Alyssa Allen* at ¶ 6 (May  
7 5, 2015). This is a reasonable interpretation and application of the Bylaws. Further, the Bylaws require  
8 that officers be chosen by the board at the next board meeting after the annual meeting, and officers will  
9 hold office until the successor has been chosen. (See Art. VII.B, Exhibit C at 11). Therefore, it is  
10 contemplated that officers, who are board members, will remain in office until the next board meeting  
11 after the annual election, and the board’s policy for non-officers is consistent with this provision.  
12 Plaintiffs’ erroneous interpretation would make Art. VII.B non-operative—a result disfavored by  
13 Montana law. The GLA’s policy is a harmonious interpretation of Art. VI.D. and Art. VII.B. and gives  
14 effect to both clauses which is favored by Montana law. Mont. Code Ann. §§ 28-3-201 & 204.

15 Although the GLA did not violate Art. XI.C. because these policies do not require notice under  
16 that provision, the GLA still informs its members through newsletters and board meetings where  
17 various policies are explained. Members are still allowed and encouraged to give feedback on any  
18 policy. Just because it chooses to inform its members in this fashion does not create some duty of due  
19 process for every action by the board. The notice provision specifically applies only to making Rules or  
20 Regulations or enforcing the Covenants, Bylaws, Rules or Regulations. The instances complained of  
21 Plaintiffs are not those actions. Plaintiffs seek to have the Court overrule the board’s interpretation of its  
22 own Bylaws—an express power—and apply the interpretation they want. Plaintiffs’ mere disagreement  
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1 with the board's reasonable interpretation and application of the Bylaws is not a genuine issue of  
2 material fact.

3 Ultimately, Plaintiffs have taken the position that these alleged violations are worth years of  
4 litigation and all the associated costs and time. These alleged violations are nothing more than trivial  
5 complaints, and the law disregards trivialities. Mont. Code Ann. § 1-3-224.  
6

7 **3. Plaintiffs' alleged denial of financial documents is not a genuine issue of material fact.**

8 Again, this claim is all about Plaintiffs' own interpretation of what documents they are entitled  
9 to under the Bylaws and Montana law. Plaintiffs believe they are entitled to inspect check details,  
10 deposit checks, cancelled checks, credit card and bank statements. They also allege not providing these  
11 documents allows the GLA to hide theft of member funds and does not allow them to prove theft and  
12 misappropriation of member funds.  
13

14 Plaintiffs' baseless and false accusations of theft and misappropriation are nothing more than  
15 accusations without one shred of evidence. Plaintiffs have been making these claims for years yet have  
16 not produced one iota of evidence to back them up. Such accusations are improper and actionable and  
17 demonstrate why the GLA had to take the extraordinary measure of seeking to have Plaintiffs declared  
18 vexatious litigants. Plaintiffs will sue for everything and anything with no justification.  
19

20 In regards to the scope of financial records Plaintiffs are entitled to, the GLA Bylaws state: "The  
21 financial reports and Membership records of the Association shall be available at the principal office of  
22 the Association for inspection at reasonable times by any Member." (Bylaws Art. VI.B.13., Exhibit C at  
23 6). There is no definition for "financial report" or "Membership records" but those terms should be read  
24 in conjunction with the Montana statutes. The financial records a member is entitled to inspect under  
25 Montana law are financial statements showing assets and liabilities and results of operations and  
26 accounting records. Mont. Code Ann. § 35-2-906(5). Mont. Code Ann. § 35-2-907.  
27  
28

1 The GLA board has interpreted the Bylaws designation of “financial reports” to mean the  
2 records enumerated by the Montana Nonprofit Corporation Act. The board’s interpretation is binding on  
3 the GLA because the board “has the power to interpret all the provisions of these Bylaws and such  
4 interpretation shall be binding on all persons.” (Bylaws Art. XII.A., Ex. C at 16). The board has  
5 interpreted “financial records” which a member may inspect to mean the statement of receipts and  
6 expenditures for each fiscal year (Bylaws Art. VIII.H., Exhibit C at 13) and financial statements  
7 showing assets and liabilities and results of operations. Mont. Code Ann. § 35-2-906(5)(e). These  
8 records also constitute accounting records under generally acceptable accounting practices.  
9

10 Notably, the GLA amended Art. VIII.I. of the Bylaws to read:

11 **I. Inspection of Books.** The Membership Records of the Association shall be available at the  
12 principal office of the Association for inspection at reasonable times by any Member in  
13 accordance with the Montana Non-Profit Corporation Act under Title 35, Chapter 2 (2014) and  
14 as amended. “Membership Records” means those records that a non-profit is specifically  
15 required to keep for inspection pursuant to the Montana Non-Profit Corporation  
16 Act under Title 35, Chapter 2 (2104) and as amended. (See Exhibit F).

17 This amendment makes the board’s long-standing interpretation of what records a member is entitled to  
18 inspect even clearer. Members are entitled to inspect the records enumerated in the Montana Non-Profit  
19 Corporation Act.

20 Plaintiffs claim they are entitled to see check details, deposit checks, cancelled checks, credit  
21 card and bank statements, or anything a board member might see. These documents contain sensitive  
22 information such as account numbers of members and credit card numbers which Plaintiffs should not  
23 have. Additionally, all financial expenditures and receipts are reflected in what they are allowed to have.

24 Similarly, Plaintiffs take issue with membership records they are provided. Again, they want to  
25 see everything, but neither the Bylaws nor Montana law allow that. Membership records have always  
26 been interpreted by the board to mean name, address, and number of votes pursuant to Mont. Code Ann.  
27 § 35-2-906(3). Recently, Montana law has changed to allow members to receive notice of member  
28

1 meetings via email; if this option chosen, the email address must be disclosed to other members. Mont.  
2 Code Ann. § 35-2-535. As of yet, no GLA members receive member meeting notice by email. The GLA  
3 has not shared phone numbers, account balances, private correspondence, and other information about  
4 members because it has not considered that information part of “membership records.” The majority of  
5 feedback from members has been in support of maintaining the privacy of members. See Aff. Alyssa  
6 Allen at ¶ 7 (May 5, 2015).

8 Plaintiffs also raise another new claim that the GLA is not requiring fidelity bonds for board  
9 members. However, Art. VIII.J. clearly states such bonds “may” be required. (Exhibit C at 14). Again,  
10 Plaintiffs are simply disagreeing with the board’s application of discretionary powers.

11 The Bylaws and Montana law enumerate what records members are entitled to inspect. No  
12 matter how many times this information is provided to Plaintiffs, it is apparently insufficient, and they  
13 ask for more or claim the GLA is hiding information. There is no conceivable purpose for why Plaintiffs  
14 should have access to private member information beyond what is allowed by law. Plaintiffs’ mere  
15 disagreement with the Bylaws and Montana law is not a genuine issue of material fact.

16  
17  
18 **4a. Plaintiffs’ alleges misappropriation and overspending on High South is not a genuine issue of material fact.**

19 Plaintiffs’ next argument simply repeats spurious claims of “misappropriation” and non-  
20 aggregate spending. Plaintiffs claim the GLA spends more money maintaining some roads than on  
21 others. Plaintiffs claim this violates the Covenants. Some years, depending on many factors, the GLA  
22 does spend more money on some roads than others. However, the Covenants do not prohibit this, and  
23 recognize this may happen. At its core, the GLA exists to maintain the roads so its members can access  
24 the properties. The Covenants state the intent and explain the factors determining road spending:  
25

26  
27 The Association intends to maintain a private road system within the platted road easements for  
28 vehicular access to the various parcels within the Community.... The Association may designate  
and define different qualities or levels of road construction and maintenance within the

1 Community (such as residential roads, foothill roads, mountain roads, etc.) according to its  
2 limited ability to deal with such conditions as topography, terrain, elevation, native soil and  
3 materials, slope, grade, easement location, parcel location, drainage, climate, weather, snow, ice  
4 and mud, and limited resources and equipment. (Covenants § 8.01(c), Exhibit D at 17).

5 Further, “The Association and all of the Landowners and their guests have the right to use any of the  
6 platted road easements opened by the Association....” (Covenants § 8.01(a), Exhibit D at 17).

7 As noted in the opening brief, there are 22 miles of roads within the GLA that go from the valley  
8 floor at 5,000 feet to elevations of 6,600 feet. The roads referred to as “High South” by Plaintiffs are in  
9 South Glastonbury in the higher elevations. Because of the topography, some sections of the roads  
10 (including in those in High South) may require more snow plowing, grading, drainage maintenance, and  
11 gravel than others.

12 Plaintiffs also cite to their Exhibit 6 which is the GLA Road Policy. However, the Road Policy is  
13 subordinate to the Covenants. The Covenants give ultimate direction and power regarding maintenance  
14 on the roads, and the Road Policy was an implementation document generated in 2008, and it is of  
15 course subject to change within the constraints of the Covenants. However, the Covenants do not place  
16 any geographic restriction on where money is spent on the roads. As long as the money being spent is  
17 assessment money, it can be spent on any road for any reason regardless of road location, classification,  
18 or amount budgeted.

19 The Covenants wisely give the board the flexibility to spend where and when it is needed so  
20 members can access their property tempered by the “limited ability to deal with such conditions as  
21 topography, terrain, elevation, native soil and materials, slope, grade, easement location, parcel location,  
22 drainage, climate, weather, snow, ice and mud, and limited resources and equipment.” (Covenants §  
23 8.01(c), Exhibit D at 17).

24 Plaintiffs seek to apportion funds to the roads adjacent to the property the funds are collected  
25 from. This not only violates the Covenants but is completely impractical. This is not a genuine issue of  
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1 material fact because there are no facts in dispute. Some roads require more maintenance dollars. The  
2 Court may decide whether or not the Covenants prohibit this.

3 **4b. The GLA's use of the website is not a genuine issue of material fact.**

4 Plaintiffs claim the way the GLA uses its website creates a genuine issue of material fact. It does  
5 nothing of the sort. Plaintiffs cite no Bylaw, Covenant, or law they claim the GLA is violating because  
6 there is no Bylaw, Covenant, or law that dictates how the GLA is supposed to run its website. Simply  
7 put, Plaintiffs disagree with how the GLA website is administered and ask the Court to impose changes  
8 on it unsupported by the GLA's governing documents and Montana law.

9  
10 Plaintiffs' chief complaint is that the GLA spends money mailing bills, notices, and other  
11 correspondence. Plaintiffs fail to acknowledge the GLA is required by law and the Bylaws to mail  
12 certain notices. Changing this would require changing the Bylaws or violating Montana law. Further,  
13 Plaintiffs assume all GLA members have access to the internet and email, which is not the case. Finally,  
14 Plaintiffs disagreement with how the website is used does not justify litigation.

15  
16 Finally, Plaintiffs claim the website use violates Covenant 11.05 for not being consistent with its  
17 responsibilities and good business practices. (See Exhibit D at 24). Covenant 11.05 does not use that  
18 language and simply reads that maintenance of the roads is first priority for GLA funds with the  
19 remainder to be used at the discretion of the GLA. Again, this is common theme to all of Plaintiffs'  
20 claims, they are disagreeing with discretionary actions. None of the discretionary actions complained of  
21 are unreasonable or require Court action nor do they create genuine issues of material fact.

22  
23  
24 **5. The GLA's paying its board members for non-board services does not create a genuine issue of material fact.**

25 Plaintiffs take issue with a few board members being paid by the GLA for services unrelated to  
26 their board duties. The GLA does pay some board members for non-board duties—that is not a fact in  
27 dispute. The issue is whether the practice is allowed by law or the Bylaws, and it is.  
28

1 Article VI.K. of the Bylaws states:

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

10 Additionally, the Board has the authority to:

11 Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws,  
12 supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers,  
13 agents, employees, or committee members of the Association. (Bylaws Art. VI.B.6., Exhibit C at  
14 6).

15 Officers of the GLA are chosen by the Board and must be Board members with the exception of  
16 the secretary who may be a non-board member. (Bylaws Art. VII.A., Exhibit C at 11). Reading the two  
17 provisions of the Bylaws together, it is clear that not only may Board members may be compensated for  
18 services rendered in capacities other than as Directors, but they may be compensated if they take on the  
19 additional burden of being an officer, employee, or committee member of the GLA.

20 The GLA can and does pay board members who are contractors or employees rendering services  
21 to the GLA in other capacities such as snow removal, construction, road maintenance, and  
22 administrative work. See Aff. Alyssa Allen at ¶ 12 (May 5, 2015). The Bylaws clearly allow this, and  
23 Plaintiffs have not produced any evidence to the contrary.

24 Rather, Plaintiffs argue the GLA did not seek out competitive bids for some of the work which  
25 violates good business practices under Covenant 11.05. Again, Covenant 11.05 does not mention good  
26 business practices nor does it require competitive bids although the GLA does solicit bids or work as  
27 circumstances dictate. See Aff. Alyssa Allen at ¶ 13 (May 5, 2015). It prioritizes funds to be first spent  
28

1 on the roads and then at the GLA's discretion. (Exhibit D at 24). It bears repeating: the GLA has the  
2 discretion to spend the funds as it sees fit.

3 Plaintiffs claim Art. III of the Articles of Incorporation prohibit paying anyone funds of the  
4 GLA. (See Exhibit E at 1). They do not explain how the GLA would maintain the roads with volunteer  
5 labor. However, the Articles specifically allow the GLA to pay all expenses incurred in the conduct of  
6 its business and to enter into and pay contracts. (Exhibit E at 2). The Montana Non-Profit Corporation  
7 Act also allows the GLA to pay employees and contractors with no limitation on who they are. Art. III  
8 prohibits the distribution of income and assets based simply on someone's status. It does not preclude  
9 the expenditure of income or assets to procure goods or services from directors, officers, members, or  
10 other private persons.  
11

12  
13 Plaintiffs give examples of past or present board members who have been paid for services other  
14 than serving as a director. Although Plaintiffs have some of the details wrong (Alyssa Allen was not  
15 hired then fired<sup>1</sup>), the GLA does not dispute that board members have been paid for services other than  
16 as directors. The Bylaws allow this. The Articles allow it. Montana law allows it. The Court should rule  
17 that they do so as well.  
18

19 **6. Plaintiffs' alleged denial of meeting minutes does not create a genuine issue of material fact.**

20 Plaintiffs claim they were not given meeting minutes from private meetings and committee  
21 meetings and most open board meetings. However, this claim is unfounded.  
22

23 First, Art. VI.F. of the Bylaws states: "All business of the Board other than confidential matters  
24 (in the discretion of the Board) shall be conducted in an open meeting." (Exhibit C at 7). Again,  
25 Plaintiffs take issue with the board exercising its discretion to hold closed meetings about confidential  
26 matters. The GLA board does have closed session meetings where it discusses topics such as the  
27

28 \_\_\_\_\_  
<sup>1</sup> And these details are not material facts.

1 ongoing litigation with Plaintiffs and employee matters. Sometimes the open meeting minutes reflect  
2 the closed session topics without details. See *Aff. Alyssa Allen* at ¶ 8 (May 5, 2015). For example,  
3 Plaintiffs' Exhibit 15 shows there was a closed session on December 9, 2013 where an orientation was  
4 given to the new board members and this lawsuit was discussed. Plaintiffs cite no law or precedent that  
5 would entitle them to the information shared in a private meeting by the people they are suing.  
6

7         The board does mark regular meeting minutes as confidential with the intent of protecting them  
8 from distribution outside of the GLA membership. They are not marked in order to deny them to  
9 members as Plaintiffs claim—which is contradicted by the fact Plaintiffs possess them. Members who  
10 request these minutes are provided them. See *Aff. Alyssa Allen* at ¶ 9 (May 5, 2015). Plaintiff Daniel  
11 O'Connell was a board member and obviously acquiesced to the practice, and he should be estopped  
12 from complaining about it now.  
13

14         Further, Plaintiffs claim they were not allowed to inspect minutes is untrue. They have copies of  
15 them because they were allowed to inspect and copy. Previous requests for the GLA to make copies for  
16 Plaintiffs were denied because Plaintiffs refused to pay the reasonable costs of labor and materials as  
17 allowed by law. Plaintiffs previous document requests were “catch-all” requests that failed to state the  
18 purpose and identify with reasonable particularity the documents they wished to inspect. See *Aff.*  
19 *Alyssa Allen* at ¶ 4 (May 5, 2015).  
20

21         What Plaintiffs really take issue with is the GLA's practice of incorporating committee actions  
22 by report into the regular board meetings. As Plaintiffs' Exhibit 8 shows, the various committees report  
23 to the board and make recommendations which are then voted on. Some committees have authority to  
24 take action, and they report on any actions taken. Plaintiffs allege this shows committee minutes are not  
25 taken, but what they really disagree with is the form of the minutes. See *Aff. Alyssa Allen* at ¶ 10 (May  
26 5, 2015).  
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1 Similarly, Plaintiffs complain of email votes by the board, and the alleged lack of proof of  
2 actions by written consent. Art. VI.J. allows the board to take action by written consent without a board  
3 meeting. (See Exhibit C at 9). It requires the written consent to be attached to meeting minutes.  
4 However, the GLA board ratifies all actions by written consent at the next regular board meeting, and  
5 on advice of counsel, the board was informed that such ratification obviated the need for attaching the  
6 emails because ratification made the emails unnecessary. See Aff. Alyssa Allen at ¶ 11 (May 5, 2015).

7  
8 Finally, Plaintiffs fail to identify what meeting minutes they were refused. They do not identify  
9 dates, times, or meeting for which they were denied minutes. A mere allegation is not a genuine issue of  
10 material fact. Here, it is obvious Plaintiffs have meeting minutes because they used them as exhibits.  
11 Plaintiffs refused to pay the labor and materials necessary to meet their demands. They also failed to  
12 inform the Court that when they agreed to bring their own copier and paper, the GLA allowed them  
13 over 8 hours on two separate occasions to inspect and copy GLA records.

14  
15 **7. The GLA's secret ballot elections do not create genuine issues of material fact.**

16 Plaintiffs also claim the GLA's voting procedures violate the law and the governing documents.  
17 Notably, Plaintiffs' last lawsuit was in regard to voting practices which have been in place since the  
18 inception of the GLA in 1997. Both Plaintiffs have voted this way for many years, and Plaintiff Daniel  
19 O'Connell was elected using these same procedures. Claims about the GLA's voting procedures are  
20 barred by *res judicata*, waiver, laches and estoppel. (See *O'Connell v. Glastonbury Landowners*  
21 *Association, Inc.*, 2013 MT 259N attached as Exhibit G).  
22

23  
24 The GLA holds its elections by secret ballot which is a democratic organizations. Allowing  
25 members to see who voted for who would chill the election process, and open voters up to retaliation  
26 and abuse. Absentee ballots reference member names and parcel numbers thus allowing them to be  
27 viewed would violate voter confidentiality. Ballots filled out at meetings do not contain this information  
28

1 but viewing only those ballots would not provide the actual tallies. Further, the GLA protects ballots  
2 because it does not want them to be tampered with. The Plaintiffs can factually prove the actual number  
3 of votes by means other than by viewing the actual ballots. Aff. Alyssa Allen at ¶ 14 (May 5, 2015).

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

8 Plaintiffs also claim the membership list prepared before a meeting pursuant to Mont. Code  
9 Ann. § 35-2-535 requires disclosure of email addresses. They cite the GLA's alleged confidentiality  
10 policy (Plaintiffs' Exhibit 6). However, Exhibit 6 is a letter to members asking for input on a future  
11 confidentiality policy. Plaintiffs' complaints are about the letter, not the policy because the policy is not  
12 in place yet.

13 Plaintiffs state email addresses must be included as election documents, but are incorrect.  
14 Recently, Montana law has changed to allow members to receive notice of member meeting via email in  
15 which case the email address must also be disclosed. Mont. Code Ann. § 35-2-535. Only if a member  
16 elects to receive notice by email, is the email address then subject to disclosure. No GLA members have  
17 elected to receive meeting notice by email therefore there is no disclosure requirement. Aff. Alyssa  
18 Allen at ¶ 7 (May 5, 2015). Plaintiffs raise no issues of genuine material fact which preclude summary  
19 judgment in regards to elections.

20 **8. The GLA's bidding process is not a genuine issue of material fact.**

21 Plaintiffs again argue the board is liable for "unlawful distributions" because it did not get  
22 multiple bids on every contract it entered into. This is simply not the case. Plaintiffs again point to no  
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1 law or governing document which requires bids. Plaintiffs submit no evidence that the GLA is required  
2 to get multiple bids.

3       However, over the years, the board has regularly informed the membership about various job  
4 needs at meetings, through the newsletter and announcements. Sometimes, when time allowed, bids  
5 were solicited. Work was awarded based on best price and the ability to do the work. Often there was  
6 only one interested party. Due to timeliness of circumstances, some work is performed by whoever can  
7 be found in a timely fashion and has the equipment and/or expertise to perform the work.  
8

9 **9. Plaintiffs' contentions regarding the counterclaim are not genuine issues of material fact.**

10       Plaintiffs include argument about the GLA's counterclaim and why it is invalid. However, the  
11 GLA moved for summary judgment on Plaintiffs' claims against the GLA and any other defendants.  
12 The GLA is not seeking summary judgment on its counterclaim yet. The effect of the GLA's motion  
13 would be the dismissal with prejudice of Plaintiffs' Amended Complaint leaving the counterclaim  
14 against the Plaintiffs to be decided.  
15

16       However, Plaintiffs raise arguments against the counterclaim which are improper. First,  
17 Plaintiffs claim they "won" lawsuit DV-11-193 because it was settled. However, they fail to note the  
18 settlement agreement states it is not an admission of liability. (See Exhibit A at ¶ 9). Second, they claim  
19 they somehow prevailed in cases DV-12-220 and DV-12-164. However, the Montana affirmed the  
20 dismissal of those cases with prejudice. (See Exhibit G).  
21

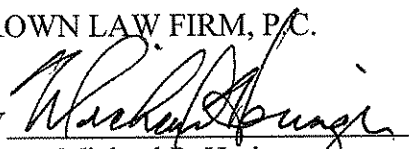
22       Plaintiffs also claim the Montana Supreme Court saw merit in the instant case by remanding it to  
23 allow them to amend their complaint. That ruling said no such thing. It simply said Plaintiffs should be  
24 given another chance to coherently state their complaint. Finally, Plaintiffs claim that because 10 out of  
25 the 12 board members who were on the board when they started filing lawsuits years ago or now no  
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1 longer on the board it shows their claims have merit. It does not; it simply shows how long Plaintiffs  
2 have been wasting the time and resources of the GLA, its members, its board, and the Courts.

3 **CONCLUSION**

4 Plaintiffs continually allege the GLA has violated the rights of property owners, harmed  
5 the property, or misappropriated funds. They never provide specifics, and they fail to produce any  
6 evidence of actual harm. They also have failed to establish genuine issues of material fact sufficient to  
7 defeat summary judgment. For the above reasons, GLA respectfully requests an Order from the Court  
8 entering summary judgment in its favor on all of Plaintiffs' claims dismissing their Amended Complaint  
9 with prejudice.  
10

11 DATED this 5th day of May, 2015.

13 BROWN LAW FIRM, P.C.  
14 BY   
15 Michael P. Heringer  
16 Seth M. Cunningham  
17 The Brown Law Firm, PC  
18 Attorneys for Glastonbury  
19 Landowners Association, Inc.

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**CERTIFICATE OF SERVICE**

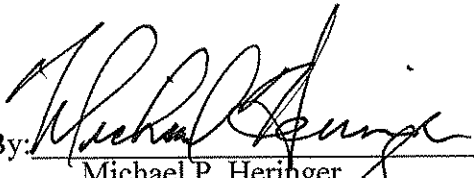
I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail, postage prepaid, and addressed as follows this 5<sup>th</sup> day of May, 2015:

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