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

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

14 Plaintiffs,

15 v.

16 GLASTONBURY LANDOWNERS
17 ASSOCIATION, INC. & Current GLA Board
18 of Directors,

18 Defendants.

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

**DEFENDANT'S BRIEF IN SUPPORT OF ITS
MOTION FOR A PROTECTIVE ORDER**

19 COMES NOW the above named Defendant Glastonbury Landowners Association, Inc. (GLA)
20 by and through their counsel of record, and submits this brief in support of its Motion for a Protective
21 Order. There are three issues which the GLA seeks relief from the Court regarding. First, Plaintiffs
22 Daniel K. O'Connell and Valery A. O'Connell (Plaintiffs) continue to demand to inspect GLA
23 documents claiming their requests have nothing to do with the current litigation, and refuse to make
24 requests through discovery. Second, Plaintiffs recorded part of a closed session board meeting where the
25 GLA board met with its attorney and have refused to return the recording and have posted information
26 from the recording on their website. Third, Plaintiffs removed GLA meeting minutes from GLA records
27 and refuse to return them.
28

FACTUAL BACKGROUND

1
2 One of the issues in this case is Plaintiffs' document inspection rights under a previous
3 settlement agreement, the Montana Nonprofit Corporation Act, and the GLA Bylaws. (See page 4 of
4 Plaintiffs' "New Amended Complaint & Motion for Pleading" dated Feb. 31, 2013). The issue has been
5 extensively briefed in the GLA's pending Motion for Summary Judgment. Plaintiffs allege the GLA has
6 denied them the right to inspect GLA documents, and the GLA disputes this. Plaintiffs make demands
7 to inspect GLA documents and claim their requests are not part of this lawsuit. Despite requests from
8 the undersigned counsel, Plaintiffs continue to make such requests directly to the GLA board and refuse
9 to make requests through the discovery process.
10

11 The issue of document inspection has been litigated before and was the subject of a stipulated
12 settlement agreement. Even after that, there was disagreement about the scope of Plaintiffs' inspection
13 rights and charging for producing copies of documents. Aff. Allen at ¶ 2 (Jul. 27, 2015). This Motion
14 stems from requests Plaintiffs began sending to the GLA for documents in May of 2014. Aff. Allen at ¶
15 3 (Jul. 27, 2015).
16

17 Throughout May, June, and July of 2014, Plaintiffs continually sent demands for various
18 documents they claimed they were entitled to. (See Exhibit A¹). The GLA responded through counsel to
19 the various defective requests. Even though Plaintiffs had put the issue of document inspections at issue
20 in the current lawsuit, the GLA was willing to accommodate proper requests within the scope of
21 Plaintiffs' inspection rights. Aff. Allen at ¶ 3 (Jul. 27, 2015). The corporate records were available to
22 Plaintiffs on two separate occasions, June 28, 2014 and July 8, 2014 for almost nine hours. The GLA
23 has no office of its own and so had to arrange with third-parties space acceptable to Plaintiffs for the
24 inspection. Aff. Allen at ¶ 4 (Jul. 27, 2015).
25
26
27

28 ¹ Exhibit consists of many demands from Plaintiffs and responses from the GLA and is included to inform the Court of the time and resources Plaintiffs' demands waste.

1 The records consisted of several boxes full of binders containing meeting minutes, accounting
2 records, and many other documents going back to 1997 when the GLA was formed. Aff. Allen at ¶ 5
3 (Jul. 27, 2015). The records were kept in chronological order. Plaintiffs brought their own copy machine
4 to make copies of the records. Aff. Allen at ¶ 5 (Jul. 27, 2015). Plaintiffs' activities left the records in
5 complete disarray. Pages were taken out of binders and put back in the wrong order, in the wrong
6 section, and attachments were separated from the parent documents. Aff. Allen at ¶ 5 (Jul. 27, 2015).
7 Much time and energy has been put into trying to reassemble these records. Additionally, there was no
8 way to track what Plaintiffs had copied to avoid duplicate requests for records already inspected. Aff.
9 Allen at ¶ 5 (Jul. 27, 2015). After the inspection, the GLA stated that all future requests need to be made
10 through discovery until the conclusion of litigation. Additionally, the GLA warned that requests outside
11 of discovery would be responded to with a Motion for a Protective Order. (See Exhibit A-55).
12
13

14 On July 6, 2015, Plaintiffs sent another demand to inspect GLA records directly to the GLA
15 board and not to the GLA's attorneys. (See Exhibit B-4). They claimed their inspection was not part of
16 this lawsuit. However, Plaintiffs made all demands to inspect GLA records part of this lawsuit when
17 they claimed they were being denied their rights in their amended complaint. The GLA responded on
18 July 13, 2015 reminding Plaintiffs that all requests must be through discovery and requesting Plaintiffs
19 withdraw the demand. (Exhibit B-5). Plaintiffs refused via email. (Exhibit B-7). Plaintiffs' requests
20 amount to harassment and are an attempt to skirt the Rules of Civil Procedure.
21
22

23 On May 18, 2015, the GLA board held a closed session meeting after the regular open meeting.
24 Aff. Kehoe at ¶ 2 (Jul. 27, 2015). The purpose of the closed session meeting was to discuss confidential
25 matters including a telephone conference with the GLA's attorney to discuss this litigation. Plaintiffs
26 attended the open meeting and as usual, recorded it. Everyone but the board was asked to leave at the
27 conclusion of the open meeting, and the closed session began. Aff. Kehoe at ¶ 2 (Jul. 27, 2015).
28

1 The GLA's attorney called in and was discussing this litigation when Plaintiff Daniel O'Connell
2 reentered the room. He picked up his recording device which, unbeknownst to the board, had been left
3 in the room running. Aff. Kehoe at ¶ 3 (Jul. 27, 2015). Before he left the room, Mr. O'Connell stated:

4 I left my phone here, I apologize. I've been recording your whole meeting, too. I am the only
5 one... my wife will probably be the only other person who hears this... I will not publish
6 anything that I hear on this from your private meeting I promise you. You have my word on that.
Aff. Kehoe at ¶ 3 (Jul. 27, 2015).

7 On May 26, 2015, Plaintiffs posted to their privately run website, www.mygla.org, an article about what
8 was said during the closed session. Aff. Kehoe at ¶ 4 (Jul. 27, 2015). (See Exhibit C). The GLA
9 informed its attorneys of the recording, and on July 1, 2015, the GLA sent a letter to Plaintiffs
10 requesting the recording be handed over to the GLA's attorney, the destruction of any other copies, the
11 removal of the web post, and a stipulated protective order prohibiting the publication, reference or use
12 of the recording in any way. (Exhibit B-1). Plaintiffs responded on July 5, 2015 refusing to do so.
13
14 (Exhibit B-2).

15
16 Additionally, there was another incident involving Plaintiffs at the May 18, 2015 board meeting.
17 During the monthly board meetings, binders containing the GLA minutes of previous meetings are on
18 hand if members want to look at them. Aff. McSherry at ¶ 2 (Jul. 27, 2015). The GLA administrative
19 assistant, Karleen McSherry, observed Plaintiff Valery O'Connell with a meeting minute binder
20 removing several pages of minutes from the binder. Plaintiffs did not replace these documents prior to
21 leaving the meeting. Aff. McSherry at ¶ 2 (Jul. 27, 2015). Upon inspection, Ms. McSherry found
22 minutes for meetings from November 17, 2014; December 8, 2014; January 19, 2015; February 9, 2015;
23 February 16, 2015; and March 16, 2015 were missing. Aff. McSherry at ¶ 2 (Jul. 27, 2015). Ms.
24 McSherry informed the GLA Secretary Alyssa Allen, after the meeting. Aff. McSherry at ¶ 2 (Jul. 27,
25
26 2015).
27
28

1 At the next board meeting on June 15, 2015 which Plaintiffs attended, the GLA Secretary Alyssa
2 Allen announced the minutes had been taken and asked for their return. Aff. Allen at ¶ 6 (Jul. 27, 2015).
3 Plaintiffs did not return the minutes. The GLA attorneys sent a letter to Plaintiffs on July 13, 2015
4 responding to Plaintiffs' refusal to surrender the recording and also asked for the return of the minutes.
5 (Exhibit B-5). Plaintiffs responded July 14, 2015 refusing to do so and demanding to inspect GLA
6 documents. Plaintiffs denied taking them, but then stated, "If we accidentally took the minutes, they
7 would be problematic to find in our huge file cabinet. If you can give us factual proof that we
8 accidentally took them, then we would be glad to pay GLA copy charges at a reasonable rate of 10 cents
9 per page to make new copies of such minutes." (Exhibit B-8).
10

11 The GLA has attempted in good faith to confer with Plaintiffs in an effort to resolve these issues
12 under Mont. R. Civ. P. 26(c)(1). Plaintiffs have refused to so warranting a Protective Order from the
13 Court and sanctions.
14

15 ARGUMENT

16 Mont. R. Civ. P. 26(c) provides:

17 A party or any person from whom discovery is sought may move for a protective order in the
18 court where the action is pending The motion must include a certification that the movant
19 has in good faith conferred or attempted to confer with other affected parties in an effort to
20 resolve the dispute without court action. The court may, for good cause, issue an order to protect
21 a party or person from annoyance, embarrassment, oppression, or undue burden or expense,
including one or more of the following:

22 (A) forbidding the discovery;

23 (B) **specifying terms, including time and place, for the discovery;**

24 (C) **prescribing a discovery method other than the one selected by the party seeking
discovery;**

25 (D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

26 (E) designating the persons who may be present while the discovery is conducted; (emphasis
27 added).
28

1 This rule allows the Court to issue a protective order to prevent one party to a lawsuit from being
2 harassed by the other such as in the case of unjustifiably repetitious demands. *State of Or. Ex. Rel.,*
3 *Worden v. Drinkwalter*, 216 Mont. 9, 13, 700 P.2d 150, 152 (1985).

4 **1. The Court should forbid document requests outside the rules of discovery.**

5 The GLA requests this Court issue a Protective Order forbidding further requests by Plaintiffs to
6 inspect or copy the GLA records except in the case of a formal discovery request. The GLA has
7 accommodated the informal requests from Plaintiffs, but have requested multiple times that Plaintiffs
8 use the channels of discovery. Clearly, Plaintiffs have no intention of doing so, and an Order is
9 appropriate.
10

11 Mont. Code Ann. § 35-2-907, subject to limits of reasonableness, allows members of nonprofit
12 corporations to inspect and copy the records of the organization. Further, Section VIII.I of the GLA
13 Bylaws states: “The financial reports and Membership records of the Association shall be available at
14 the principal office of the Association for inspection at reasonable times by any Member².” For this
15 reason, the GLA accommodated Plaintiffs’ requests while requesting that formal discovery be used to
16 request records. However, the Plaintiffs’ rights under the statute and the Bylaws can still be exercised
17 through the formal discovery process. The rights under the statute and the Bylaws are limited by
18 standards of reasonableness. In litigation where the access to the records and the content of the records
19 is at issue, requiring parties to use the rules of discovery to inspect those records is reasonable.
20
21

22 The GLA seeks an Order from this Court directing Plaintiffs to use formal discovery when
23 requesting GLA records during the pendency of the litigation. Plaintiffs have put the inspection of the
24 GLA records at issue in this case. The requests are obviously to further all of Plaintiffs’ claims in this
25

26
27 ² This provision was amended by the GLA members in November 2014 to now read: “The Membership Records of the
28 Association shall be available at the principal office of the Association for inspection at reasonable times by any Member in
accordance with the Montana Non-Profit Corporation Act under Title 35, Chapter 2 (2014) and as amended. “Membership
Records” means those records that a non-profit is specifically required to keep for inspection pursuant to the Montana Non-
Profit Corporation Act under Title 35, Chapter 2 (2014) and as amended.”

1 case. GLA records will undoubtedly be exhibits at depositions and at trial and should be tracked closely.
2 Therefore, the inspection and exchange of documents within GLA records should be done through
3 formal discovery requests which will aid in identifying what has been produced and what the scope of
4 the requests are.

5 Further, this Order will protect the GLA from undue burden, annoyance, and expense. Plaintiffs
6 numerous requests harass the GLA, and when they were allowed to inspect the records, they left a mess
7 demonstrating the need to track any exchanges through discovery. Finally, Plaintiffs should not be
8 contacting the GLA board directly on matters relating to the claims in their amended complaint—
9 namely the inspection of GLA records.
10

11 This same issue was examined by Judge Blair Jones in the Montana Twenty-Second Judicial
12 District Court. (See Order Granting Motion for a Protective Order attached as Exhibit D). There, the
13 plaintiffs suing their homeowner's association nonprofit corporation continued to make requests to
14 inspect corporate records despite requests by the defendants to use the discovery process. Judge Jones
15 wrote:
16

17
18 Given the circumstances here, the Court determines that a protective order is appropriate.
19 Although § 35-2-907(1) and (2), MCA provides that members of a corporation are entitled to
20 "inspect and copy" certain corporate records under specified conditions, access is limited to a
21 "reasonable time and location specified by the corporation." Because the parties are in litigation
22 where access to the records and the content of the records is at issue, it is reasonable to require
23 the parties to exchange such records through formal channels of discovery. Doing so aids in
24 identifying which records have been produced and the scope of the requests and avoids
25 inadvertent duplicity of effort and expense. Defendants' counsel has made good faith attempts to
26 resolve the dispute without court action, by actually accommodating Plaintiffs' requests on two
27 occasions and by multiple letters to Plaintiffs' counsel requesting the use of formal discovery.
28 (Exhibit D at 2-3).

25 Judge Jones also awarded the defendant its attorney fees and expenses incurred in bringing the motion.

26 The situation is the same here. The GLA has accommodated Plaintiffs requests but in order to
27 avoid duplicity of effort and expense, to aid in identifying documents, and to avoid the disorganizing of
28

1 the GLA records has requested that Plaintiffs engage in discovery in the lawsuit they filed. Plaintiffs
2 have refused entitling the GLA to a protective order.

3 **2. The Court should order the surrender of the recording and prevent further use.**

4 As outlined above and in the affidavit of Daniel Kehoe, Plaintiffs left their recording device in the
5 room after the regular board meeting and recorded part of the private meeting between the GLA board
6 and its attorney. Mont. Code Ann. § 26-1-803 creates the attorney-client privilege in Montana. The
7 Montana Supreme Court has stated:
8

9 The attorney-client privilege protects communications between attorney and client during the
10 course of the professional relationship. The fundamental purpose of the attorney-
11 client privilege is to enable the attorney to provide the best possible legal advice and encourage
12 clients to act within the law. The privilege furthers this purpose by freeing clients from the
13 consequences or the apprehension of disclosing confidential information, thus encouraging them
14 to be open and forthright with their attorneys. The privilege serves to ensure attorneys freely
15 give accurate and candid advice to their clients without the fear it later will be used against the
16 client. *American Zurich Ins. Co. v. Mont. Thirteenth Jud. Dist. Ct.*, 2012 MT 61, ¶ 9, 364 Mont.
17 299, ¶ 9, 280 P.3d 240, ¶ 9.

18 The purpose of the closed session meeting was for the GLA board to meet with its attorney to receive
19 legal advice. Plaintiffs clearly violated the attorney-client privilege by leaving their recording device in
20 the room without consent. Further, Plaintiffs' actions violated Mont. Code Ann. § 45-8-213(c) by
21 recording the private meeting without the knowledge of the board.

22 Whether leaving the recorder in the room was a mistake or not, Plaintiffs further compounded
23 the breach by posting information from the recording on their website. Plaintiffs have refused to
24 surrender the recording despite its protected and privileged nature. Tellingly, Plaintiffs did not actually
25 deny they have the recording in their refusal. (Exhibit B-2). Instead, they avoid the subject with
26 nonsensical threats about insurance fraud. Plaintiffs' conduct entitles the GLA to a protective order.
27
28

1 **3. The Court should order the return of GLA records.**

2 As outlined above, the GLA’s administrative assistant, Karleen McSherry, observed Plaintiffs
3 removing meeting minutes from the GLA’s records at the May 18, 2015 board meeting. Despite a
4 request to do so, Plaintiffs have refused to return the minutes. They do not even unequivocally deny
5 they took them. Instead they say finding them would be difficult in their huge file cabinet. It is no
6 excuse to take the property of another without permission and then claim returning it would be too
7 difficult because you have to find the property. Plaintiffs also offer to pay the GLA ten cents per page.
8 Plaintiffs’ conduct entitles the GLA to a protective order.
9

10 **4. The GLA is entitled to expenses including attorney fees incurred in this Motion.**

11 Finally, the GLA requests its expenses, including attorney fees, incurred in making this motion
12 pursuant to Mont. R. Civ. P. 37(a)(5). It is clear from the attached correspondence that the GLA’s
13 attorneys have requested that all record inspections and requests be done through formal discovery.
14 Additionally, the GLA requested the surrender of the recording and return of the meeting minutes.
15 Despite these clear requests, Plaintiffs continue to request inspection causing the GLA more time and
16 expense and refuse to return the wrongfully obtained recording and minutes. For these reasons, the GLA
17 should be awarded their expenses, including attorney fees, in filing this Motion.
18
19
20

21 **CONCLUSION**

22 For the above reasons, the GLA respectfully requests the Court to issue an order requiring
23 Plaintiffs use the formal discovery process, prohibiting improper communications between the parties,
24 prohibiting requests for previously provided information and documents, ordering the surrender of the
25 recording to the GLA’s attorneys, ordering the destruction and takedown of a closed session board
26 meeting recording, prohibiting the publication, reference to or use of the recording in any way, and
27
28

1 ordering the return of GLA documents taken by Plaintiffs. Finally, the GLA requests its expenses,
2 including attorney fees, incurred in filing this Motion.

3 DATED this 27th day of July, 2015.

4
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6 315 North 24th Street
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8 Billings, MT 59103-0849

9 BY 

10 Michael P. Heringer
11 Seth M. Cunningham
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13 *Attorneys for Glastonbury*
14 *Landowners Association, Inc.*
15
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1 CERTIFICATE OF SERVICE

2 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,
3 postage prepaid, and addressed as follows this ~~27th~~ day of July, 2015:

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

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

12 Alanah Griffith
13 Griffith Law Group
14 108 North 11th Ave, Unit 1
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18 *Landowners Association, Inc.*

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

>
>
> -----Original Message-----
> From: dko@mac.com
> Sent: Mon, 12 May 2014 14:17:53 -0600
> To: minnickmanagement@inbox.com
> Subject: Written request for membership list including member emails

>
> Date: May 12, 2014
> To: GLA Board and Minnick Management
> From: Dan and Val O'Connell
> Re: Written request within 2 business days for membership list including all available "authenticated electronic identification" which includes e-mail addresses.

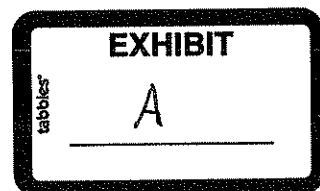
>
> Attached for reference is a copy of the 2011 settlement agreement between the GLA and O'Connells. Part one of this agreement says, "GLA" Board of Directors will provide a current GLA membership list to the O'Connells upon request, but no more than two times a year."

>
> As 35-2-535, MCA(below) and the settlement agreement allows, this e-mail serves as written request for a current GLA membership list; including GLA members email addresses (per 35-2-535 & 114 below) due by Wednesday May14, 2014; which is two business days after today.

>
> In 2013, the Mt. Legislature amended the non-profit corporation act that defines non-profit corp. membership list and added "authenticated electronic identification" pursuant to 35-2-535, MCA part (1) that says, "The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting." Also, 35-2-114, MCA. says in part: " (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications. "The GLA (and website: glamontana.org communications/email link (<http://www.glamontana.org/email-lists/>) already collects e-mail addresses of members; for which copies of GLA member email addresses are hereby requested.

>
> Sincerely,
> Dan and Val O'Connell

>
>



A-1

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May 20, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027

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

Retired
Rockwood Brown
John Walker Ross
Margy Bonner

Dear Mr. and Ms. O'Connell:

This letter is in response to your email to the GLA Board dated May 12, 2014 where you request a member list pursuant to Mont. Code Ann. § 35-2-535. Title 35, Part 5 of the MCA governs voting of members and notices of annual and special meetings. The specific statute you cite states:

After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting.... Mont. Code Ann. § 35-2-535(1)

The list identified in Mont. Code Ann. § 35-2-535(1) is specifically prepared for providing notice of annual, regular or special meetings of members. This list is different and separate from the regular member records kept pursuant to Mont. Code Ann. § 35-2-906(3). The list is only prepared in preparation for a member meeting. There are currently no dates fixed for notice of a member meeting, and so there is no such list at this time.

As you note, Mont. Code Ann. § 35-2-114(3) defines "authenticated electronic identification" to include an email address. In your email, you request email addresses of members as well. However, email addresses are not required to be part of this list.

From its clear language the statute states the list "must show the address or authenticated electronic identification"—meaning only one of the two must be on the list. The GLA has never provided notice of member meetings via email because Article V.D of the By-laws requires the GLA to provide notice of member meetings by U.S. Mail or facsimile. Thus, the GLA's list prepared before member meetings has historically contained mailing addresses because that is how notices are sent.

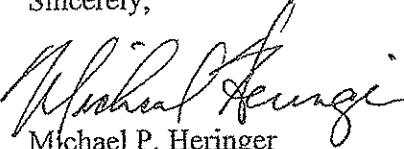
Daniel and Valery O'Connell
May 20, 2014
Page 2

As you likely know, the GLA By-laws were recently amended by special meeting (See attached ballot and notice of special meeting). Article V.D. of the bylaws was amended to allow notice of member meetings via email provided the Owner has given written consent to be notified by email.

This amendment has just passed, and the GLA has yet to send out forms to the landowners to obtain written consent for email notification and so no "authenticated electronic identification" for the purpose of receiving member meeting notices has been obtained. Until that occurs, the GLA will continue to send out notices of member meetings via U.S. mail.

Once a date has been set for another member meeting, another list of members will be prepared pursuant to Mont. Code Ann. § 35-2-535. If any members have given written consent for notification of the meeting via email, their email addresses will be on that list which will be available for inspection by all GLA members.

Sincerely,



Michael P. Heringer

MPH:
Enc.
cc:

Glastonbury Landowners Association
PO Box 1862 • Bozeman, Montana 59771 • 406-451-0033

BALLOT AND NOTICE OF SPECIAL MEETING - YOUR VOTE IS NEEDED!

HOW TO COMPLETE THIS BALLOT:

1. Sign your ballot;
2. Vote (if you have any questions or are considering not voting, please contact a member of the Board);
3. Submit your ballot by one of the following means:
 - a) Attend the meeting and submit your ballot in person
 - b) Mail your ballot to: GLA, PO Box 1862, Bozeman, MT 59771
 - c) Fax your ballot to: 406-556-7197(We will have additional ballots available at the Special Meeting for your convenience.)

ALTERNATIVE WAY TO COMPLETE THIS BALLOT

1. You may appoint a proxy by filling in the proxy information at the end of this ballot and delivering this to the person you have designated. (Proxies may not be given to the Board or to Directors.)
2. Have your proxy sign this ballot and vote on your behalf.
3. Have your proxy attend the special meeting, mail it in, or fax it as described above.

The Glastonbury Landowners Association (GLA) records show that you either own or have an ownership interest in, or have another fiduciary interest in, the listed membership interest, as of the Date of Record for this ballot (March 14, 2014). Your voting status will be based upon this membership interest. If you believe the GLA records to be in error, contact Minnick Management at 406-556-7187 immediately.

NOTICE OF SPECIAL MEETING

The Special Meeting to discuss the Amendments to the Bylaws, cast your vote on the Amendments, and to count the personally-cast or by proxy-cast ballots will be held on **Monday, April 14, 2014 at 7:00 p.m. at St. John's Church in Emigrant, Montana.**

You may cast your ballot by:

- a. Attending the meeting
- b. Mailing this ballot to the Secretary at: **GLA, PO Box 1862, Bozeman, MT 59771**
- c. Faxing this ballot to the Secretary at: **406-556-7197**
- d. Giving this ballot to your proxy who will attend in your place or submit the ballot via fax or mail.

Note: Mailed ballots must be delivered to the GLA's postal address no later than Monday, April 14, 2014. Faxed ballots must be transmitted no later than 4:30 pm on Monday, April 14, 2014.

INSTRUCTIONS

You are voting on various amendments to the Amended Bylaws for the GLA, adopted on November 16, 1998. The amendments are set forth below. These amendments will modify the existing Bylaws as specifically stated in these amendments.

THE FOLLOWING INFORMATION IS FROM THE BYLAWS AND MONTANA LAW, AND GOVERNS YOUR VOTE:

Voting Requirement for Passage: According to Article XII, Section I of the Bylaws,

A. Interpretation and Amendments. The Board shall have the power to interpret all the provisions of these Bylaws and such interpretation shall be binding on all persons. These Bylaws and the Articles of Incorporation may be amended, repealed or altered, in whole or in part, from time to time whenever at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time attending any Annual or Special Meeting, where such proposed action has been set forth in the call and notice of such meeting, shall have voted in favor of such amendment. Any such amendments may be proposed by the Board of Directors or by a petition signed by at least twenty percent (20%) of the Members. Once made, any such amendments, alterations, changes or new Articles or Bylaws, or the repeal of any provision thereof, shall apply to all Members as fully and to the same extent as if originally included herein or in the Articles of Incorporation.

Pursuant to the Bylaws, Article V, Section E. "Quorum. Except as otherwise provided herein, the presence in person or by proxy of Members having twenty-five percent (25%) of the total authorized votes of all Members of record of the Association shall constitute a quorum at all meetings of the Members...."

Changes in the Declaration language are denoted with *italics* (new language) and ~~strikethrough~~ (removed language.)

Please check "Yes" or "No" for each proposed amendment presented on the following pages.

THE FOLLOWING AMENDMENTS ARE FOR YOUR CONSIDERATION

Amendment 1.

ARTICLE V: MEETINGS OF MEMBERS

D. **Notice of Meetings.** The Secretary shall by U. S. mail, postage prepaid, personal delivery, ~~or~~ facsimile transmission ("fax"), *or, if the Owner has given Owner's written consent to be notified by e-mail, by the Owner's e-mail address on record with the Association,* give a notice for each Annual Meeting or Special Meeting of the Members at least thirty (30) days, but not more than sixty (60) days prior to such meeting. The notice shall state the purpose thereof, as well as the time and place where it is to be held. Said notice shall be mailed, ~~or~~ faxed, *or e-mailed* to each Member at his address, ~~or~~ fax number, *or e-mail address* of record with the Association or at such other address, ~~or~~ fax number, *or e-mail address* as the Member shall have designated by notice in writing to the Secretary. Notices of Annual Meetings shall include a ballot for electing the Board of Directors and a proxy form. The mailing of notice of a meeting in the manner herein shall be considered service of notice.

_____ Yes, I am voting for the proposed Amendment to Article V, Section D of the current Bylaws as presented in Amendment 1.

_____ No, I do not want to amend the current Bylaws as presented in Amendment 1.

Amendment 2.

ARTICLE VI: BOARD OF DIRECTORS

G. **Notice.** Notice of meetings shall be mailed, delivered personally, ~~or~~ faxed, *or e-mailed* by the Secretary, or other person designated by the President, to each Director to be received not less than three (3) days before any such meeting. Notice of a Special Meeting shall state the purpose thereof, place, date and time. If sent by mail, the notice shall be deemed to be delivered on its deposit in the U. S. Mail. If notice is sent by fax, it is deemed delivered when the fax transmission is complete to the fax number last given in writing to the Secretary by the Director. *If the notice is e-mailed, it is deemed delivered when the e-mail is sent to the e-mail address last given in writing to the Secretary by the Director.* The notice may be waived by any Director by signing a written waiver to be filed with the Minutes of the meeting. If all of the Directors attend a meeting or if all of the Directors sign a written waiver, the requirement of notice shall be deemed thereby waived, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting has not been lawfully called or convened.

_____ Yes, I am voting for the proposed Amendment to Article VI, Section G of the current Bylaws as presented in Amendment 2.

_____ No, I do not want to amend the current Bylaws as presented in Amendment 2.

Dated this _____ day of _____, 2014.

Signature: _____

Printed Name: _____

Parcel / Lot No.: _____ North / South
(circle one)

PROXY DESIGNATION FORM

If you wish to designate another person as your proxy, please fill in the information below and have your proxy bring this form to the meeting, or submit it by fax or mail. Proxies may not be given to the Board, or to Directors.

I, _____ hereby designate
(print your name)
_____ to act as my proxy
(print name of proxy)
regarding the amendments to the Bylaws as described on this ballot form.

Signature: _____

Parcel / Lot No.: _____ North / South
(circle one)

From: nathan minnick <nminnick@inbox.com>
Date: June 9, 2014 11:06:13 AM MDT
To: Alyssa Allen <alyssaallen33@gmail.com>
Subject: FW: Re: 2nd Written request for copy/inspection of membership list and more

Hi Alyssa,

Just forwarding this to you in case you didn't have it also.

FYI - In regard to this request, I will not be in the office starting tomorrow the 10th thru next Tuesday the 17th.

-----Original Message-----

From: dko@mac.com

Sent: Sun, 08 Jun 2014 21:43:31 -0600

To: minnickmanagement@inbox.com

Subject: Re: 2nd Written request for copy/inspection of membership list and more

Date: June 8, 2014

From: Dan and Val O'Connell
PO Box 77 Emigrant, MT. 59027
To: GLA Board, council Brown Law Firm, & Minnick Agent
Regarding: Second demand for membership list, & response to Brown Law Firm letter of May 20, 2014:

To the above parties,

This written request is to inform you of the legal requirements as pursuant to §35-2-907, MCA. (below) regarding this O'Connells' written request for inspection & copy of GLA records; including membership list with emails as allowed under §35-2-114(3)). It is necessary under the law to tell you this demand to inspect & copy GLA records is made in good faith and for a proper purpose to solicit the votes of the members in an election to be held by the corporation and the records are directly connected with this purpose, and not to be used for any commercial purpose; or sold to or purchased by any person.

However, this law below does not require notice of a meeting nor does it define or limit what a membership list comprises; thus other law definitions of what a membership list comprises does apply under Ch. 35 and includes GLA member addresses including their email addresses.

Law §35-2-907, MCA. (below) also requires such copies as soon as 5 days after receipt of this written request.

Therefore, O'Connells demand such membership list (with emails) copies, other copies and/or inspection of all GLA accounting and member records at a reasonable time in six days Friday June 13, 2014 @ 11AM at the (Bozeman) office of Minnick Management - the GLA agent & designated GLA records holder. At that time, any requested copies should be emailed back to this address dko@mac.com to avoid incurring any expenses to hard copy.

Otherwise, there will be a request per § 35-2-909, MCA for a "Court-ordered inspection or corporate records ... at the corporation's expense ... on an expedited basis... also order the corporation to pay the member's costs, including reasonable attorney fees...."

Signed: *Daniel K. O'Connell* *Valery O'Connell*
Daniel O'Connell Valery O'Connell

35-2-907. Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation

written notice at least 5 business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to 35-2-910, the membership list.

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

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) the records are directly connected with this purpose.

(4) This section does not affect:

(a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record

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
Matthew I. Tourlotte
Jeffrey T. McAllister
Jon A. Wilson
Seth M. Cunningham
Shane A. MacIntyre
Thomas R. Martin
Andrew J. Miller

June 11, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

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

Retired
Rockwood Brown
John Walker Ross
Margy Bonner

Dear Mr. and Ms. O'Connell:

This letter is in response to your email to Minnick Management dated June 8, 2014 where you request to inspect GLA records pursuant to Mont. Code Ann. § 35-2-907 on Friday, June 13, 2014.

The GLA cannot comply with your request because it was not given timely notice. Mont. Code Ann. § 35-2-907(1) requires that you give the GLA "at least 5 business days before the date on which" you wish to inspect and copy. Your email was sent on Sunday, June 8, 2014; Sunday is not a business day. Thus, the GLA was only given 4 business days before the desired inspection date and does not have to comply with your request.

Further, an inspection under Mont. Code Ann. § 35-2-907 allows you only to inspect records identified in Mont. Code Ann. § 35-2-906 which includes "a record of members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast." Clearly, email addresses of members are not included in such an inspection.

As we explained in our previous letter, "authenticated electronic identification" pertains only to lists of members prepared in anticipation of a member meeting. Mont. Code Ann. § 35-2-535(1). This list is different and separate from the regular member records kept pursuant to Mont. Code Ann. § 35-2-906(3). The GLA does not possess a list containing "authenticated electronic identification" because no member has given consent to receive notice of member meetings via email.

Daniel and Valery O'Connell
June 11, 2014
Page 2

Email addresses are only required to be on a membership list in limited circumstances—which do not occur here. Other than that, members have an expectation of privacy and that the GLA will protect their private information from disclosure which would result in their receipt of unsolicited emails. The Montana Constitution provides a right to privacy, and the GLA will abide by its members wishes.

Finally, Mont. Code Ann. § 35-2-908 imposes the reasonable costs of labor and material for any copies the GLA provides to you at your request. All members of the GLA who have requested copies of records have been charged and have paid these charges without complaint—except you. Because you have refused to pay these reasonable costs in the past and still owe the GLA these monies, the GLA has no obligation to provide you with copies of records in the future until the amount you owe is paid.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Heringer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael P. Heringer

MPH: ar

From: Daniel O'Connell <dko@mac.com>
Sent: Wednesday, June 11, 2014 9:26 PM
To: Robert Wallace; Laura Boise; GLA email Box; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel
Cc: Michael Heringer; Seth Cunningham; Anna Robertus
Subject: Re: O'Connell 4th written request for GLA membership records/list including emails

Date: June 11, 2014, 10PM

(3rd Demand sent June 11, 2014; 2nd Demand sent **June 8, 2014**; 1st Demand sent May 12, 2014)

From: Dan and Val O'Connell

PO Box 77

Emigrant, MT. 59027

To: GLA Board, council Brown Law Firm, & Minnick Agent

Re: 4th Written Demand for GLA emails & membership list on June 17 or 18, 2014, & response to Brown Law Firm letter of May 23, 2014:

To the above parties,

Within five business days on June 17 or 18, 2014, O'Connells again give written demand to inspect and/or copy "Membership records of the [GLA] Association" that for the following reasons should include email addresses as follows:
GLA Bylaw VIII. I. says, "Inspection of Books. The financial reports and Membership records of the Association shall be available at the principal office of the Association for inspection at reasonable times by any Member."

Under this Bylaw, read in the light the 2012 Settlement agreement, and of allied sections of the state laws cited in three prior demands for records, these "are sufficiently broad to encompass email addresses" in light of the obvious purposes of the statutes. "Even before the advent of the internet and electronic mail, the term "address" was defined as: "[t]he location at which a particular organization or person may be found or reached." (The American Heritage Dictionary (New College ed.1981) p. 15.) An email address fits within this definition because it is a location, albeit an electronic location, at which a person or organization can be reached. Nothing in the statute limits the term "address" to mean only a physical street address. One could not seriously argue that the term excludes post office boxes [not found in the statute language]. An electronic mail address is nothing more than an electronic post office box."*

Furthermore other corporations in states like California tried to deny its members emails for the same reasons stated in Brown Law Firm letters. But the California State Superior Court Court of Appeals refutes almost identical arguments used by Brown Law's letters to O'Connells, and this appeals court concluded in 2010, "the term "address" as used in statutes is sufficiently broad to include email addresses"* for membership lists requested by the O'Connells.

(*Source: WORLDMARK, the Club, Plaintiff and Appellant, v. WYNDHAM RESORT DEVELOPMENT CORPORATION, Defendant and Appellant; Robin Miller, Defendant and Respondent; Clarke Wixon et al., Intervenors and Respondents. No. C061019. Decided: August 23, 2010, California Appeals Court.)

In their four written requests for membership list, the O'Connells should thus be allowed to at least inspect email records which are used by the GLA and thus part of the "Membership records of the Association."The GLA does keep records that include emails of some of its members, because the O'Connells received one such GLA email list recently to prove it.

To deny O'Connells inspecting/copying these emails as GLA "Membership records" is also costly, unreasonable burden upon the O'Connell members, because emails do not cost money unlike using postal addresses that cost a lot of money, is unreasonable and unnecessary in some cases to contact members.

Please allow this written request for membership records including emails of GLA members, otherwise, there will be a request per § 35-2-909, MCA for a "Court-ordered inspection or corporate records ... at the corporation's expense ... on an expedited basis... also order the corporation to pay the member's costs, including reasonable attorney fees...."

Signed: Daniel K. O'Connell Valery O'Connell
Daniel O'Connell Valery O'Connell

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
Matthew I. Tourlotte
Jeffrey T. McAllister
Jon A. Wilson
Seth M. Cunningham
Shane A. Macintyre
Thomas R. Martin
Andrew J. Miller
Adam M. Shaw

June 12, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

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

Retired
Rockwood Brown
John Walker Ross
Margo Bonner

Dear Mr. and Ms. O'Connell:

This letter is in response to your email to the Glastonbury Landowner's Association, Inc. (GLA), various Board members, and us dated June 11, 2014, where you repeat your request to inspect GLA records and threaten litigation should the GLA not allow you to inspect any member email addresses it may have. We appreciate your amending your request to comply with the statutorily five business days requirement. Your notice was sent at 10:00 p.m. on June 11, 2014. Business days do not include Saturdays and Sundays. Therefore, the earliest the GLA must make records available to you is June 19, 2014 (five days counting June 12, 13, 16, 17, and 18). The records will be available to you June 19 or 20; please let us know the day and time you wish to inspect.

Your claims regarding your right to access member email addresses are still incorrect. The scope of your inspection rights is governed by Mont. Code Ann. § 35-2-907. The membership list addressed in Title 35, Chapter 2, Part 9 requires only "the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast." Mont. Code Ann. § 35-2-906. Email addresses are not required under this statute, and the GLA does not consider email addresses part of membership records at this time.

Additionally, the membership list prepared under Title 25, Chapter 2, Part 5 does contain "authenticated electronic identification" (email addresses) if that is how notice of member meetings (not board, committee, or other meetings) is given. The two Parts and their requirements are separate and distinct. The GLA does not need to provide email addresses under Part 5 because it does not provide notice of member meetings by email yet. Your request is a bit early because as you know, the GLA just amended its By-laws to allow it to begin collecting and using member email addresses to provide notice of member meetings. When it does begin collecting and using email addresses

Daniel and Valery O'Connell
June 12, 2014
Page 2

under the newly amended By-laws, you and every other GLA member will be entitled to email addresses.

Since these amendments have just passed, the GLA has not yet begun to deliberately collect and use email addresses under this section of the By-laws, and legally you are not yet entitled to them. However, considering that this is the plan, litigating the issue would be a pointless waste of time and money since providing email addresses to members is inevitable once the amended By-laws are implemented. Therefore, the GLA Board has decided to release member emails it has now before it must legally do so to you or any other member who requests them in order to avoid yet another lawsuit.

Please be advised, that while you may inspect these records, the GLA will not provide any more copies under your statutory inspection right until you pay the \$60.00 you owe for the reasonable costs of labor and materials from the last time you requested GLA records.

Sincerely,



Michael P. Heringer

MPH:amr

From: Daniel OConnell <dko@mac.com>
Sent: Friday, June 13, 2014 4:12 PM
To: Anna Robertus; Michael Heringer; Seth Cunningham
Cc: Minnick Management Inc
Subject: Re: O'Connell v. Glastonbury Landowners Assoc. / June 12th Correspondence

To Brown Law Firm,

While we disagree with your legal interpretations in in June 12th letter, the 19th at 1Pm is when we are available to go to Minnick to view documents. Also even though it is inconvenient, we plan to bring our own printer to copy some documents ourselves at no cost to the GLA. The 2012 \$60 bill you mention we got from the GLA for past documents was not reproduction costs, so we have repeatedly disputed them for two years. As a result, we have been denied the right to view and copy GLA documents for two years now.

Please make sure Minnick allows us to view and ourselves copy documents on 19th at 1PM at their office in Bozeman.

Sincerely,
Dan and Val O'Connell

On Jun 12, 2014, at 4:38 PM, Anna Robertus <ARobertus@BrownFirm.com> wrote:

Good afternoon, Mr. O'Connell:

Please see the attached correspondence dated June 12, 2014, from Michael Heringer. The original letter has been placed in the U.S. Mail today.

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
Phone: 406.248.2611 | Fax: 406.248.3128 | Direct Dial: 406.247.2817
*Not licensed to practice law

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<2014-6-12 To Dan and Valery O'Connell.pdf>

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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

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

June 17, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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:

We are writing you to reschedule your inspection of GLA records set for June 19, 2014 at 1 p.m. at Minnick Management in Bozeman. There have been several developments since our last letter requiring this change. First, the contract with Minnick Management has been terminated. One of the provisions of the contract was that the GLA procure liability insurance and list Minnick Management as an additional insured. As you are aware, the GLA has been unable to find a liability insurer, and as a result the contract with Minnick Management has been terminated.

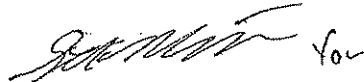
Second, the GLA planned to have Nathan Minnick prepare its records for transfer this week and return them to the custody of the GLA. Unfortunately, Nathan will not be able to do this due to the tragic and unexpected death of a family member. Because of these circumstances, it cannot be reasonably expected of Nathan to organize and prepare the records for transfer before June 19, and he will not be available on June 19 to help with the inspection.

The plan is to have Nathan Minnick transfer the records to the GLA Treasurer, Janice McCann sometime next week once his family situation allows him to do so. Once the transfer occurs an inspection can be arranged at a convenient time for you.

Daniel and Valery O'Connell
June 17, 2014
Page 2

Finally, because you specifically asked for any email addresses of members that the GLA might have, we have enclosed that list with this letter to fulfill that portion of your inspection request. Once we know for certain the date that the Treasurer will have the GLA records, we will let you know and re-schedule the inspection. We appreciate your anticipated cooperation given these unexpected circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Heringer", with a small "for" written to the right of the signature.

Michael P. Heringer

MPH:amr
Enclosure

GLA Email List for Agendas

tabsrods@earthlink.net, kdtranch@wispwest.net, wunsch@wispwest.net,
seanhalling@hotmail.com, chuckandsally@wispwest.net, ashaw@tsl.org,
robranson@bigsky.net, fran99nye@live.com, highland@wispwest.net,
perickson@heiexpo.com, unionrepron@aol.com, iona563@wispwest.net,

ie-usa@optimum.net, crw.stargazer@gmail.com, itsme@rudyparker.com,
kathleen.rmc@gmail.com, nvcgiraffel220@yahoo.com, cdavid@wispwest.net,
ynpdhieux@yahoo.com, timbrockett@gmail.com, rachelinmontana@yahoo.com,
kbsones@hotmail.com, themeads@wispwest.net, alyssa@imt.net,

dbhansard@gmail.com, stoneviewmt@gmail.com, dko@mac.com,
octagon@wispwest.net, frank_maglio@msn.com, charlene@wispwest.net,
hughmhamilton@yahoo.com, lash@wispwest.net, ronaldgmarshall58@gmail.com,
Rojuwoo29@yahoo.com, ajajnichols@msn.com, annemhaug@hotmail.com,
debsweb@gmail.com, KG_newby@yahoo.com, richbolen@aol.com,

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Shane A. MacIntyre
Thomas R. Martin
Andrew J. Miller
Adam M. Shaw

June 19, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

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

Retired
Rockwood Brown
John Walker Ross
Margy Bonner

Dear Mr. and Ms. O'Connell:

We have arranged with Nathan Minnick to transfer the GLA records to Alanah Griffith next week. The records will be available at her office on Wednesday, June 25 at 1:00 p.m. or Thursday, June 26 at 1:00 p.m. Ms. Griffith's office is located at 108 North 11th Ave, Unit #1 in Bozeman, MT. Will either of those dates and times work for your inspection? If so, please let us know, and the GLA will plan on it.

Also, in response to your email dated June 18, 2014 requesting a list of the email addresses of the GLA Board members, the GLA has no duty to provide these emails to you. Mont. Code Ann. § 35-2-906(2)(f) requires that a non-profit corporation maintain the names and addresses of its current officers and directors. Currently, the official way to contact the GLA and its Board of Directors by email is at this address: info@glamontana.org. Any emails to the Board of Directors for purposes related to the GLA should be sent to this address. However, the Board of Directors has agreed to make their personal email addresses available to you; any GLA related emails should still be directed to info@glamontana.org though.

Sincerely,



Michael P. Heringer

MPH:amr
encl.

dankehoegla@gmail.com, alyssaallen33@gmail.com, ross@brunson.org,
sheridan.stenberg@gmail.com, janicegla7@gmail.com, mizzi@wispwest.net,
scottmcbr@gmail.com, lauraboisegla@wispwest.net, PaulRantalo@mail.com,
gpdubiel@gmail.com, robhw@wispwest.net, robranson@bigsky.net

From: Daniel OConnell <dko@mac.com>
Sent: Saturday, June 21, 2014 6:28 PM
To: Robert Wallace; Laura Boise; GLA email Box; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel; Anna Robertus
Cc: Michael Heringer; Seth Cunningham; Kelly Anderson
Subject: Re: O'Connell v. Glastonbury Landowners Assoc. / June 19th Correspondence

Date: June 21, 2014
From: Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027
To: GLA Board, council Brown Law Firm, & Minnick Agent
Re: 5th Written Demand for GLA emails & membership list, & response to Brown Law Firm letter of June 19, 2014 (3rd & 4th Demand sent June 11, 2014; 2nd Demand sent June 8, 2014; 1st Demand sent May 12, 2014);

The Brown Law Firm, on behalf of the GLA, sent us a letter and email on June 19, 2014. This correspondence letter asks if the inspection of GLA documents on June 25 or 26th will work for the O'Connells. Certainly not.

The O'Connells have been requesting such documents since May 12, 2014. Every time the O'Connells agree on some date, the GLA via attorneys changes that date.

They can not be expected to be delayed every time the GLA has a new delay and excuse. Nor does the law allow this. In fact the law 35-2-535 (below) requires for certain documents that the O'Connells can inspect them "within two business days" "in the city where the meeting is to take place." The place where the July 21, 2014 special meeting is to take place is Emigrant.

The O'Connells refuse to travel an hour away to Bozeman to inspect or copy such documents such as the membership list and more. They also need a reasonable place where they can bring their copier to copy such documents. It is difficult for the O'Connells to make a two hour round trip to copy and view such GLA documents. And an attorneys office is not reasonable nor convent, nor allowed as it is in Bozeman.

Therefore, as your previous letter stated, O'Connells would be happy to meet with GLA secretary Janice McCann here in Emigrant at a facility where the O'Connells can conveniently copy all such documents. Dates available for them are on Friday June 27th, Sat. June 28th, and Monday June 30, 2014. If one of these dates and Emigrant location is not allowed then the O'Connells will ask the court to intervene at the GLA's expense.

Sincerely,
Val O'Connell
dko@mac.com
406-577-6339
PO Box 77
Emigrant, MT. 59027

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are

entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order..."

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

On Jun 20, 2014, at 9:18 AM, Anna Robertus <ARobertus@BrownFirm.com> wrote:

Good morning, Mr. O'Connell:

Please see the attached correspondence dated June 19, 2014, from Michael Heringer. The original letter and its enclosure have been placed in the U.S. Mail today.

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
Phone: 406.248.2611 | Fax: 406.248.3128 | Direct Dial: 406.247.2817
*Not licensed to practice law

CONFIDENTIALITY NOTICE: The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). This information, along with any attachments constitutes attorney-client and/or attorney work product and is confidential in nature. This information is not intended for transmission to, or receipt by, any unauthorized person. The use, distribution, transmittal or re-transmittal by an unintended recipient of this communication is strictly prohibited without our express approval in writing or by e-mail. If you are not the intended recipient of this e-mail, please delete it from your system without copying it and notify the above sender so that our e-mail address may be corrected. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege.

<2014-6-19 To Dan and Valery O'Connell.pdf>

BROWN LAW FIRM, PC

John J. Russell
Michael P. Heringer
Guy W. Rogers
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Jeffrey T. McAllister
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Seth M. Cunningham
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Thomas R. Martin
Andrew J. Miller
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315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849
Phone: 406.248.2611 | Fax: 406.248.3128

June 23, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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 Saturday, June 21, 2014 where you request to inspect documents in Emigrant on June 27, 28, or 29. Although Saturday, June 28, 2014 is not a business day, the GLA will make an exception and allow you to inspect records on that day at 10:30 a.m. The GLA does not have an official office in Emigrant, but there are a couple of options where to meet: either the Wild Flour Bakery at 4 Overlook Road in Emigrant, MT or in the lobby of the Chico Hot Springs Resort (where we could use the library room if available). Please confirm where you would like to meet.

Mont. Code Ann. § 35-2-907 allows a member to inspect certain records if the request is made in good faith and for a proper purpose, the member describes "with reasonable particularity the purpose and the records the member desires to inspect," and the records are directly connected with this purpose.

In your email on June 9, 2014 you requested inspection of "GLA records; including membership list with emails" for the purpose of soliciting the votes of the members. In your email of June 11, 2014 you requested to inspect "Membership records of the [GLA] Association" including email addresses. In your email on June 21, 2014 you identify "documents such as the membership list and more."

From these multiple emails, the only records you have described with "reasonable particularity" are a membership list and email addresses (which you have already received at no charge. Unless you inform us otherwise, the records we will have available to you at the June 28, 2014 inspection are a membership list and whatever email addresses the GLA possesses.

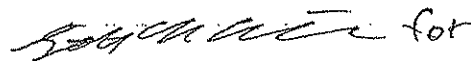
Daniel and Valery O'Connell
June 23, 2014
Page 2

If you want to specify additional records to inspect, then you will need to do so with "reasonable particularity." The GLA needs to know what records you want to inspect in order to have them available. Requests such as "GLA records" are too broad and do not meet the statutory requirement. Thus, a list of specific items you wish to inspect would be beneficial to you and the GLA.

You also identify a member list prepared pursuant to Mont. Code Ann. § 35-2-535. As we have explained before, that list is prepared specifically for member meetings and is separate from the records in Mont. Code Ann. § 35-2-907. The two business day requirement applies to the list in Mont. Code Ann. § 35-2-535—not to the records in Mont. Code Ann. § 35-3-907. Because there is a member meeting on July 21, 2014, such a list is currently available for inspection by members. That list will also be available on June 28, 2014.

You also state that you are bringing your copier to copy documents. This is why you need to describe the documents you want with "reasonable particularity" because if you do not, then the GLA will only have the previously identified membership lists and email addresses available.

Sincerely,



Michael P. Heringer

MPH:amr

From: Daniel OConnell <dko@mac.com>
Sent: Monday, June 23, 2014 10:51 PM
To: Robert Wallace; Laura Boise; GLA Mailbox; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel; Anna Robertus
Cc: Michael Heringer; Seth Cunningham; Kelly Anderson
Subject: Re: O'Connell v. Glastonbury Landowners Assoc. / June 23rd Correspondence

Date: June 23, 2014

Re: O'Connell Response to the Brown Law Firm Letter dated June 23, 2014:

To whom it may concern,

The O'Connells' email request (attached below) for GLA records was for the dates June 27, 28, or June 30, 2014, not the 29th. Regarding location, the laws cited below require the following locations to view/copy GLA corporate documents:

§35-2-535 (2)(b): " ... at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held."

§35-2-906 (5) " ... A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:.."

Chico Hot Springs and a bakery to view and copy GLA docs is NOT a reasonable place identified in the meeting notice. The meeting place identified was instead Emigrant Hall.

However, it has come to our attention that the GLA records may be moved on or about the 1st of July to #59 Taurus Rd. (Caspari House); which is across the street from our house.

If the GLA can have the records available at this same location no later than July 5th, then we would be willing to wait until then.

Regarding what records we are requesting, §35-2-535(1) MCA & §35-2-906(5)MCA exactly describes them. These are as follows:

35-2-535., MCA (part1) " ... a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting.

§35-2-906, MCA (part 5):

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers;
and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

Sincerely,
Dan & Val O'Connell
406-577-6339
PO Box 77
Emigrant, MT. 59027
dko@mac.com

On Jun 21, 2014, at 6:27 PM, Daniel OConnell <dko@mac.com> wrote:

Date: June 21, 2014
From: Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027
To: GLA Board, council Brown Law Firm, & Minnick Agent
Re: 5th Written Demand for GLA emails & membership list, & response to Brown Law Firm letter of June 19, 2014
(3rd & 4th Demand sent June 11, 2014; 2nd Demand sent June 8, 2014; 1st Demand sent May 12, 2014);

The Brown Law Firm, on behalf of the GLA, sent us a letter and email on June 19, 2014. This correspondence letter asks if the inspection of GLA documents on June 25 or 26th will work for the O'Connells. Certainly not.

The O'Connells have been requesting such documents since May 12, 2014. Every time the O'Connells agree on some date, the GLA via attorneys changes that date. They can not be expected to be delayed every time the GLA has a new delay and excuse. Nor does the law allow this. In fact the law 35-2-535 (below) requires for certain documents that the O'Connells can inspect them "within two business days" "in the city where the meeting is to take place." The place where the July 21, 2014 special meeting is to take place is Emigrant.

The O'Connells refuse to travel an hour away to Bozeman to inspect or copy such documents such as the membership list and more. They also need a reasonable place where they can bring their copier to copy such documents. It is difficult for the O'Connells to make a two hour round trip to copy and view such GLA documents. And an attorneys office is not reasonable nor convent, nor allowed as it is in Bozeman.

Therefore, as your previous letter stated, O'Connells would be happy to meet with GLA secretary Janice McCann here in Emigrant at a facility where the O'Connells can conveniently copy all such documents. Dates available for them are on Friday June 27th, Sat. June 28th, and Monday June 30, 2014. If one of these dates and Emigrant location is not allowed then the O'Connells will ask the court to intervene at the GLA's expense.

Sincerely,
Val O'Connell
dko@mac.com
406-577-6339
PO Box 77
Emigrant, MT. 59027

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

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(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

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and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

On Jun 20, 2014, at 9:18 AM, Anna Robertus <ARobertus@BrownFirm.com> wrote:

Good morning, Mr. O'Connell:

Please see the attached correspondence dated June 19, 2014, from Michael Heringer. The original letter and its enclosure have been placed in the U.S. Mail today.

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

Phone: 406.248.2611 | Fax: 406.248.3128 | Direct Dial: 406.247.2817

*Not licensed to practice law

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<2014-6-19 To Dan and Valery O'Connell.pdf>

BROWN LAW FIRM, PC

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Phone: 406.248.2611 | Fax: 406.248.3128

June 24, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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 June 23, 2014, email. Please be advised that the GLA has made arrangements to have GLA records available for inspection on Saturday, June 28, 2014, at 10:30 a.m. The GLA records will be available at Emigrant Hall, in Emigrant, Montana. The GLA has been granted the use of Emigrant Hall for this meeting only, free of charge. The GLA will have the records responsive to your request available for inspection at that time.

Please confirm that this is acceptable.

Sincerely,



Michael P. Heringer

MPH:amr

From: Daniel OConnell <dko@mac.com>
Sent: Saturday, June 28, 2014 9:29 PM
To: Robert Wallace; Laura Boise; GLA Mailbox; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel; Anna Robertus
Cc: Michael Heringer; Seth Cunningham; Kelly Anderson
Subject: Re: O'Connell v. Glastonbury Landowners Assoc. / June Correspondence

Date: June 28, 2014
To: GLA Board and Brown Law Firm
From: Dan and Val O'Connell
Re: written request for missing GLA documents

Per our recorders request today for missing GLA documents, **no later than 5 business days or July 8, 2014** you agreed to provide us to view and copy those missing documents as follows:

all written correspondence between members and the GLA since 2011,
all GLA committee member minutes, especially since 2011,
all GLA Board email votes and Board email meeting minutes since 2011,

also all GLA financial records since 2011 including:
all GLA financial records of check details since 2011,
all GLA financial records of lien lists since 2011,
all GLA financial records of member balance summary since 2011,
all GLA financial records of receipts and expenditures (and profit and loss) since 2011,

Sincerely,
Dan & Val O'Connell
406-577-6339
PO Box 77
Emigrant, MT. 59027
dko@mac.com

On Jun 23, 2014, at 10:50 PM, Daniel OConnell <dko@mac.com> wrote:

Date: June 23, 2014
Re: O'Connell Response to the Brown Law Firm Letter dated June 23, 2014:
To whom it may concern,

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- (a) its articles or restated articles of incorporation and all amendments to them currently in effect;
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Sincerely,
Dan & Val O’Connell
406-577-6339
PO Box 77
Emigrant, MT. 59027
dko@mac.com

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From: Dan and Val O’Connell
PO Box 77
Emigrant, MT. 59027

To: GLA Board, council Brown Law Firm, & Minnick Agent
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(3rd & 4th Demand sent June 11, 2014: 2nd Demand sent June 8, 2014: 1st Demand sent May 12, 2014);

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Val O'Connell
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Good morning, Mr. O'Connell:

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Thank you,
Anna

Anna Robertus*
ASSISTANT TO MICHAEL HERINGER AND JEFFREY MCALLISTER
<image003.png>
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Phone: 406.248.2611 | Fax: 406.248.3128 | Direct Dial: 406.247.2817
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<2014-6-19 To Dan and Valery O'Connell.pdf>

BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849
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July 3, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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:

In response to your June 28, 2014, email, please be advised that contrary to your assertion, on Saturday, June 28th, the GLA made available for inspection records you had previously requested. On June 28, 2014, the GLA had its records available for your inspection for nearly 5 hours. The GLA fully intends to provide documents for inspection as required by its Bylaws and as required by Montana law. It is obvious however, that your requests are not made in good faith and for a proper purpose, your purpose for inspecting the records has not been stated with reasonable particularity where required, the requests are unduly burdensome, and you are attempting to obtain discovery through document inspection which is costly and time consuming for the GLA. In response to your written request please be advised as follows:

1. **Request.** All written correspondence between members and the GLA since 2011.

Response. Please be advised that neither the GLA Bylaws, Articles of Incorporation, and nowhere under the Montana Non-Profit Corporate Organization Act are members of a non-profit corporation entitled to written correspondence between corporation members and the board of directors, especially when privacy concerns exist for the correspondence. Furthermore, it would be unduly burdensome to provide these documents for inspection. If you have legal authority for your request, the GLA will consider it.

2. **Request.** All GLA committee member minutes, especially since 2011

Response. The meeting minutes made available to you on Saturday, June 28, 2014, did include committee reports that provide a record of committee meetings and actions taken by committees that are incorporated into the monthly board

meeting minutes. The GLA will make the meeting minutes, which did include committee reports and provide a record of actions taken by committees since 2011, available to you on July 8, 2014.

3. Request. All GLA Board email votes and Board email meeting minutes since 2011.

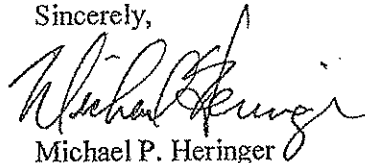
Response. The GLA provided for inspection minutes of all meetings of its members and board of directors on June 28, 2014. The GLA believes that your demand is not made in good faith and proper purpose, your purpose for the inspection has not been stated with reasonable particularity, and is unduly burdensome. The GLA believes that you are requesting these documents and multiple inspections for the purposes of pursuing your lawsuit. The proper method for pursuing matters in litigation is through discovery, not repeated demands for records inspections particularly where the GLA made the records available to you for nearly five hours on June 28, 2014. Furthermore, the actions of the Board, including the outcome of email votes, are reported at the meetings and are captured in the meeting minutes which were provided to you on June 28, 2014.

4. Request. Also all GLA financial records since 2011[sic], including:
- a. all GLA financial records of check details since 2011,
 - b. all GLA financial records of lien lists since 2011,
 - c. all GLA financial records of member balance summary since 2011,
 - d. all GLA financial records of receipts and expenditures (and profit and loss) since 2011.

Response. Even though GLA has no requirement under its Bylaws, or Montana law, it will provide you with the financial records of lien lists since 2011. The GLA will also make available for inspection, the financial records that you have requested.

As GLA documents are in transition from Minnick, it is not yet determined where the inspection will take place. The location of the inspection will be provided to you once that is determined. Alternatively, the GLA is willing to provide you with the above identified records in electronic format, thereby foregoing the need for the requested meeting on July 8, 2014. Let us know if this is acceptable, and the records will be e-mailed to you in PDF format.

Sincerely,



Michael P. Heringer

MPH:amr
Cc: Alyssa Allen
Dan Kehoe

BROWN LAW FIRM, PC

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

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

July 7, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

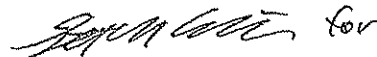
**RE: O'Connell v. Glastonbury Landowners Association
Our File No. 73200.005**

Dear Mr. and Ms. O'Connell:

As advised in my letter dated July 3, 2014, and pursuant to your request, the GLA records will be available on July 8, 2014. The documents will be available for inspection from 10:00 a.m. to 1:00 p.m. at St. John's Episcopal Church, located at 8 Story Road, Emigrant, Montana, 59027.

Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr
Cc: Alyssa Allen
Dan Kehoe

From: Daniel OConnell [mailto:dko@mac.com]
Sent: Monday, July 07, 2014 2:33 PM
To: Robert Wallace; Laura Boise; Sheridan Stenberg; GLA Mailbox; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel
Cc: Michael Heringer; Seth Cunningham
Subject: Re: O'Connell June 28th Correspondence to GLA Board and Brown Law Firm

Date: July 7th, 2014

From: Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027

To: GLA Board, & council Brown Law Firm,

Re: 7th Written Demand for GLA documents, & response to Brown Law Firm letter of July 3rd & 7th, 2014 (7th Written demand sent June 28, 2014; 6th Written Demand sent June 23, 2014; 5th Written Demand sent June 19, 2014; 3rd & 4th Demand sent June 11, 2014; 2nd Demand sent June 8, 2014; 1st Demand sent May 12, 2014);

The Brown Law Firm, on behalf of the GLA, sent us a letter emailed on July 3rd, 2014. This correspondence letter incorrectly states that GLA made available for inspection the records we requested. On the contrary, not

all requested records were available to us then; which is why the same day we requested these missing documents restated in your July 3rd letter items 1-4 as follows:

1. **Request.** All written correspondence between members and the GLA since 2011. [per Bylaw VIII(I.)]
2. **Request.** All GLA committee member minutes, especially since 2011.
3. **Request** All GLA Board email votes and Board email meeting minutes since 2011 [Action by Written Consent per Bylaw VIII(J.)]
4. **Request.** Also all GLA finical records since 2011, [per Bylaw VIII(I.)] including:
 - a. all GLA finical records of check details since 2011,
 - b. all GLA finical records of lien lists since 2011,
 - c. all GLA finical records of member balance summary since 2011,
 - d. all GLA finical records of receipts and expenditures (and profit and loss) since 2011.

(GLA Bylaw VIII(I.) "I. Inspection of Books. The financial reports and Membership records of the Association shall be available at the principal office of the Association for inspection at reasonable times by any Member." GLA Bylaw VIII(J.) Action by Written Consent... Such written consent or consents shall be filed with the Minutes of the proceedings of the Board...)

The O'Connells have been requesting such documents 1-4 in general since May 12, 2014. GLA Bylaw VIII(I.) cited above allows inspection of GLA finical reports and GLA records; which means ALL financial reports and records are we members allowed to inspect. But since these documents were requested in general on June 28, 2014, but were missing or not available on that date, the burden and fault is the GLA's or else a misunderstanding.

it should be obvious that all our requests for documents here are indeed made in good faith and for a proper purpose and with reasonable particularity as such request is for the July 23, 2014 "Special Meeting" and for O'Connell's candidacy to the GLA Board this year. HOWEVER BYLAW VIII(I) above DOES NOT REQUIRE THIS STATED PURPOSE FOR ITS MEMBERS. Also these Bylaws above and state laws below allow or do not prevent multiple inspection or do NOT limited to one inspection of such documents to GLA Corporate members. Thus there is no legal reason to deny such documents to the O'Connells. This is why the GLA should put its documents on the GLA website for its members, especially because it is a burden to us GLA members to copy such documents that the GLA stores right now in notebooks and boxes.

Lastly, you falsely claim that we "are attempting to obtain discovery through document inspection which is costly and time consuming for the GLA." GLA document inspection has NOTHING to do with us obtaining discovery, since this document request is not for discovery and has NOTHING to do with discovery. All these documents listed above were requested by the O'Connells as GLA members only. The O'Connells as GLA members have a right to such GLA documents (per bylaws and §35-2-535 & §35-2-906 (below), and have NOT requested them for any lawsuit nor any discovery. For you to refute this our stated intention then and now is disingenuous as contrary to our recorded conversation we had with you and Alyssa on June 28, 2014.

The only documents 1-4 above that do NOT exist are the GLA committee minutes since the GLA already said they do not take minutes for GLA committee meetings. Committee reports do NOT count since committee reports do not show required quorum, members present, votes and actions taken at committee meetings. **If all other documents 1-4 above are not available on July 8th, 1 PM at St John's Church here in Emigrant, then we will have to assume your client is refusing to provide them; in which case the O'Connells will ask the court to intervene at the GLA's expense.**

Sincerely,
Val O'Connell

dko@mac.com
406-577-6339
PO Box 77
Emigrant, MT. 59027

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order..."

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

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

July 3, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

Retired
Rockwood Brown
John Walker Ross
Margo Bonner

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

Dear Mr. and Ms. O'Connell:

In response to your June 28, 2014, email, please be advised that contrary to assertion, on Saturday, June 28th, the GLA made available for inspection records you previously requested. On June 28, 2014, the GLA had its records available for inspection for nearly 5 hours. The GLA fully intends to provide documents inspection as required by its Bylaws and as required by Montana law. It is obvious however, that your requests are not made in good faith and for a proper purpose, purpose for inspecting the records has not been stated with reasonable particular where required, the requests are unduly burdensome, and you are attempting to discover through document inspection which is costly and time consuming for GLA. In response to your written request please be advised as follows:

1. Request. All written correspondence between members and the GLA since 2

Response. Please be advised that neither the GLA Bylaws, Article Incorporation, and nowhere under the Montana Non-Profit Corporation Organization Act are members of a non-profit corporation entitled to written correspondence between corporation members and the board of directors especially when privacy concerns exist for the correspondence. Furthermore would be unduly burdensome to provide these documents for inspection. If you have legal authority for your request, the GLA will consider it.

Daniel and Valery O'Connell
July 3, 2014
Page 2

meeting minutes. The GLA will make the meeting minutes, which did include comm reports and provide a record of actions taken by committees since 2011, available to on July 8, 2014.

3. Request. All GLA Board email votes and Board email meeting minutes since 2011.

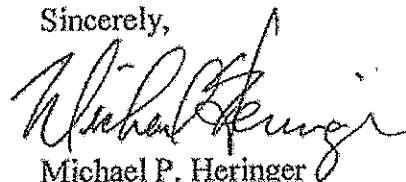
Response. The GLA provided for inspection minutes of all meetings of its members board of directors on June 28, 2014. The GLA believes that your demand is not made in good faith and proper purpose, your purpose for the inspection has not been stated with reasonable particularity, and is unduly burdensome. The GLA believes that you are requesting these documents and multiple inspections for the purposes of pursuing a lawsuit. The proper method for pursuing matters in litigation is through discovery, not repeated demands for records inspections particularly where the GLA made the records available to you for nearly five hours on June 28, 2014. Furthermore, the actions of the Board, including the outcome of email votes, are reported at the meetings and captured in the meeting minutes which were provided to you on June 28, 2014.

4. Request. Also all GLA financial records since 2011[sic], including:
- a. all GLA financial records of check details since 2011,
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 - d. all GLA financial records of receipts and expenditures (and profit and loss) since 2011.

Response. Even though GLA has no requirement under its Bylaws, or Montana law, the GLA will provide you with the financial records of lien lists since 2011. The GLA will make available for inspection, the financial records that you have requested.

As GLA documents are in transition from Minnick, it is not yet determined where the inspection will take place. The location of the inspection will be provided to you once that is determined. Alternatively, the GLA is willing to provide you with the identified records in electronic format, thereby foregoing the need for the requested meeting on July 8, 2014. Let us know if this is acceptable, and the records will be mailed to you in PDF format.

Sincerely,



Michael P. Heringer

BROWN LAW FIRM, PC

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

July 7, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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 July 7, 2014. We previously identified in our July 3, 2014 what documents the GLA will have available at the inspection tomorrow and your email does not change that. The documents identified in our July 3, 2014 letter will be available for inspection from 10:00 a.m. to 1:00 p.m. at St. John's Episcopal Church, located at 8 Story Road, Emigrant, Montana, 59027. The church has another function at 1 p.m. and is not available beyond that time.

Please feel free to contact me if you have any questions.

Sincerely,


Michael P. Heringer

MPH:amr
Cc: Alyssa Allen
Dan Kehoe

From: Daniel OConnell <dco@mac.com>
Sent: Monday, July 07, 2014 10:40 PM
To: Anna Robertus; Robert Wallace; Laura Boise; GLA email Box; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel
Subject: Re: O'Connell June 28th Correspondence to GLA Board and Brown Law Firm / July 7th (afternoon) Correspondence

If we do not get the documents then we will ask the court to intervene at the GLA's expense.

On Jul 7, 2014, at 4:19 PM, Anna Robertus <ARobertus@BrownFirm.com> wrote:

Good afternoon, Mr. and Ms. O'Connell:

Attached is the second letter of today's date. The original has been placed in the U.S. mail today.

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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<2014-7-7 To Dan & Valery O'Connell_415pm.pdf>

From: Daniel OConnell <dko@mac.com>
Sent: Saturday, July 12, 2014 12:56 AM
To: mcarver@paynewest.com; klingscheit@paynewest.com; ccline@paynewest.com
Cc: Anna Robertus; Robert Wallace; Laura Boise; GLA email Box; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel
Subject: Averting possible Insurance fraud regarding Brown Law Firm / GLA client claims

Date: July 11, 2014

To United States Liability Insurance (U.S.L.I.) Group (Agent) Payne West Insurance, & GLA Board, & Brown Law Firm,

From: Glastonbury Landowners Association members

Re: Averting possible Insurance fraud regarding Brown Law Firm / GLA client claims

It has come to our attention that since May through July 2014, the Brown Law Firm may charge the GLA **Insurer** over \$4,000 just to help facilitate documents requested by GLA members like ourselves. This charge is for Seth-Brown Law Firm attorney to come to Emigrant and sit at a table and watch us members inspect GLA documents that the GLA provided to its members.

Such GLA members document requests (via email) made by us GLA members (via email below & recorded meeting) did repeatedly state that these were member requests only and have NOTHING to do with any litigation discovery or lawsuits. This is because the insurer claims were only for the lawsuits not for such non-litigation issues like member document requests. Thus for the Brown Law Firm to state or imply otherwise in their letters and bill the GLA insurer for such member requests for documents (since May 2014) may be potential insurance fraud under ¶33-1-12-2 MCA.

For example, the Brown Law Firm letter below has to do with a GLA member request to the GLA Board to provide specific documents that its members are allowed to have. However the Brown Law Firm Letter heading describes this document request as "O'Connell v. Glastonbury Landowners Association." This implies a litigation issue. Nothing could be further from the truth since this document request has NOTHING to do with any litigation, nor discovery, nor any lawsuit; for which requests are ongoing requests made annually having nothing to do with any lawsuits. As proof, the member email attached below emphatically states that their document requests have nothing to do with lawsuits or discovery.

This letter and others will be forwarded to the GLA insurer in the hope to elevate such potential insurance fraud claims.

Sincerely,
Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027
dko@mac.com
406-577-6339

BROWN LAW FIRM, PC

315 N. 24th Street | PO Drawer 849 | Billings, Montana 59103-0849
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July 11, 2014

Daniel and Valery O'Connell
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Via U.S. Mail and Email

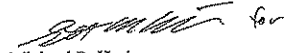
RE: O'Connell v. Glastonbury Landowners Association
Our File No. 73200.005

Dear Mr. and Ms. O'Connell:

At the conclusion of the document inspection on July 8, 2014 we discussed the GLA's scanning in its records and making them available electronically to you. Alyssa Allen has researched the options and talked with other board members. All that remains is for the board to officially approve the expenditure of funds to do the scanning. Discussion and voting on the measure is on the agenda for the upcoming board meeting on July 14, 2014. (See the attached agenda). It is predicted the measure will be passed, and the documents will be sent out for scanning next week.

Please feel free to contact me if you have any questions.

Sincerely,



Michael P. Heringer

MPH:amr
Cc: Alyssa Allen
Dan Kehoe

On Jul 7, 2014, at 2:33 PM, Daniel OConnell <dko@mac.com> wrote:

Date: July 7th, 2014
From: Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027
To: GLA Board, & council Brown Law Firm,
Re: 7th Written Demand for GLA documents, & response to Brown Law Firm letter of July 3rd & 7th, 2014
(7th Written demand sent June 28, 2014; 6th Written Demand sent June 23, 2014; 5th Written Demand sent June 19, 2014;
3rd & 4th Demand sent June 11, 2014; 2nd Demand sent June 8, 2014; 1st Demand sent May 12, 2014);

The Brown Law Firm, on behalf of the GLA, sent us a letter emailed on July 3rd, 2014. This correspondence letter incorrectly states that GLA made available for inspection the records we requested. On the contrary, not all requested records were available to us then; which is why the same day we requested these missing documents restated in your July 3rd letter items 1-4 as follows:

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it should be obvious that all our requests for documents here are indeed made in good faith and for a proper purpose and with reasonable particularity as such request is for the July 23, 2014 "Special Meeting" and for O'Connell's candidacy to the GLA Board this year. HOWEVER BYLAW VIII(I) above DOES NOT REQUIRE THIS STATED PURPOSE FOR ITS MEMBERS. Also these Bylaws above and state laws below allow or do not prevent multiple inspection or do NOT limited to one inspection of such documents to GLA Corporate members: Thus there is no legal reason to deny such documents to the O'Connells. This is why the GLA should put its documents on the GLA website for its members, especially because it is a burden to us GLA members to copy such documents that the GLA stores right now in notebooks and boxes.

Lastly, you falsely claim that we "are attempting to obtain discovery through document inspection which is costly and time consuming for the GLA." GLA document inspection has NOTHING to do with us obtaining discovery, since this document request is not for discovery and has NOTHING to do with discovery. All these documents listed above were requested by the O'Connells as GLA members only. The O'Connells as GLA members have a right to such GLA documents (per bylaws and §35-2-535 & §35-2-906 (below), and have NOT requested them for any lawsuit nor any discovery. For you to refute this our stated intention then and now is disingenuous as contrary to our recorded conversation we had with you and Alyssa on June 28, 2014.

The only documents 1-4 above that do NOT exist are the GLA committee minutes since the GLA already said they do not take minutes for GLA committee meetings. Committee reports do

NOT count since committee reports do not show required quorum, members present, votes and actions taken at committee meetings. If all other documents 1-4 above are not available on July 8th, 1 PM at St John's Church here in Emigrant, then we will have to assume your client is refusing to provide them; in which case the O'Connells will ask the court to intervene at the GLA's expense.

Sincerely,
Val O'Connell
dko@mac.com
406-577-6339
PO Box 77
Emigrant, MT. 59027

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

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(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order..."

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers;
and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

From: Daniel OConnell <dko@mac.com>
Sent: Saturday, July 12, 2014 6:34 PM
To: Robert Wallace; Laura Boise; GLA email Box; Sheridan Stenberg; Janice McCann; Paul Rantallo; Robert Branson; Gerald Dubiel; Anna Robertus; Kelly Anderson; Seth Cunningham; Michael Heringer
Subject: Re: Members' 8th request for GLA documents & Re: July 11th Correspondence
Attachments: Screen Shot 2014-05-12 at 2.14.48 PM.png; ATT13562.htm; Screen Shot 2014-05-12 at 2.14.28 PM.png; ATT13563.htm; 2014-7-11 To Dan & Valery O'Connell.pdf; ATT13564.htm

Date: July 12th, 2014
From: Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027
To: GLA Board, & council Brown Law Firm,
Re: Members' 8th Written Demand for GLA documents,

The Brown Law Firm, on behalf of the GLA, sent us a seventh letter emailed on July 11th, 2014. This seventh correspondence letter has to do with our member request for GLA documents. Please note: THIS REQUEST HAS NOTHING TO DO WITH DISCOVERY OR ANY CURRENT LAWSUIT.

After two recent meetings to inspect GLA documents, we did not have time to complete this process, especially since the 2nd meeting was cut short at 1:30 PM when the church meeting place was no longer available. Also specific document requests were denied to us by the GLA rep. Alyssa Allen and by the Brown Law Firm letter (July 3rd) claiming members can NOT inspect the following:

1. **Request.** All written correspondence between members and the GLA since 2011. [per Bylaw VIII(I.)]
2. **Request.** All GLA committee member minutes, especially since 2011. **(not available because committee minutes do NOT exist)**
3. **Request** All GLA Board email votes and Board email meeting minutes since 2011 [Action by Written Consent required per Bylaw VIII(J.)]
4. **Request.** Also all GLA financial records since 2011, [per Bylaw VIII(I.)] including:
 - d. all GLA financial records of receipts and expenditures (and profit and loss) since 2011 **(not available because receipts & expenditures do NOT exist or misnamed being copies of budget reports).**
5. **Furthermore, it has come to our attention that the GLA does contact some of its members via the telephone tree or by phone # and vice versa. O'Connells hereby request that these GLA member phone # records be available for inspection or emailed to us within five business days or by Friday July 18th. All other documents 1-4 above may be emailed to us no later than the week of July 21st.**

Again:

GLA Bylaw VIII. I. says, "Inspection of Books. The financial reports and Membership records of the Association shall be available at the principal office of the Association for inspection at reasonable times by any Member."

Under this Bylaw, read in the light the 2012 Settlement agreement, and of **allied** sections of the state laws cited in three prior demands for records, these "are sufficiently broad to encompass phone numbers" in light of the obvious purposes of the statutes.

To deny O'Connells inspecting/copying these phone numbers as GLA "Membership records" is also costly, unreasonable burden upon the O'Connell members, because phone #s do not cost money unlike using postal addresses that cost a lot of money, is unreasonable and unnecessary in some cases to contact members for election purposes.

Please allow this written request for such membership records, otherwise, there will be a request per § 35-2-909, MCA for a "Court-ordered inspection or corporate records ... at the corporation's expense ... on an expedited basis... also order the corporation to pay the member's costs, including reasonable attorney fees...."

Sincerely,
Signed: ___

BROWN LAW FIRM, PC

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

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

July 22, 2014

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
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 further response to your email dated July 12, 2014 where you requested that the GLA provide you with all written correspondence between members and the GLA since 2011, all GLA committee member minutes, all GLA Board email votes and Board email meeting minutes since 2011, and all GLA financial records of receipts and expenditures (and profit and loss) since 2011. You demanded these items by email no later than the week of July 21, 2014 which is an arbitrary and unreasonable deadline. We have already responded to your request for all member phone numbers and so this letter will address the remaining requests.

As you well know, the GLA is in the process of transferring its records from Minnick Management to an office space in Emigrant. The board has been diligently working towards renting office space at the Caspari Center, but the space is likely not available until August 15, 2014. Additionally, the board has been preparing and organizing its records for scanning into electronic form (something you have suggested the GLA do). Despite the difficulty of doing so, the GLA has accommodated your requests, and you have had nearly nine hours total of time to inspect and copy records.

Your continual requests for records inspections appear to be calculated to disrupt the GLA's transitioning of its records. Every time you send a request to inspect records, these processes are delayed in order to arrange a meeting space, pull the requested records, and organize them. This costs the GLA time and money. Further, your inspection requests appear calculated to avoid abiding by discovery rules in the lawsuit you filed against the GLA.

Therefore, any future requests need to be made through discovery until the conclusion of litigation. This letter fulfills the GLA's obligation under Mont. R. Civ. P. 26(c)(1) to make a good faith effort to resolve this dispute. Any further "document

inspection" requests will be responded to with a Motion for a Protective Order by the GLA and a request that the Court order you to pay the expenses incurred in filing the Motion including attorney fees.

The GLA responds to your latest requests as follows:

- 1) All written correspondence between members and the GLA since 2011.

Neither the GLA By-laws nor the Montana Nonprofit Corporation Act require the GLA to provide all written correspondence between the members and the GLA. Additionally, it would be unduly burdensome to do so. The GLA does not maintain separate files for "correspondence." Correspondence sent or received is filed with the documents it is in reference to. For example, newsletters are correspondence and they are filed as "newsletters." Correspondence regarding variance requests is filed with the specific variance file. If correspondence is discussed at board meetings, it is typically filed with the minutes. Thus, responding to this request would require going through every file in the GLA to pull correspondence—clearly overly burdensome. Further, such a request is too broad. Even if you were entitled to inspect correspondence, the Montana Nonprofit Corporation Act requires that you describe documents you want to inspect with "reasonable particularity"—simply asking for "all correspondence" fails to meet this requirement.

- 2) All GLA committee member minutes, especially since 2011.

As has been explained to you before, the committee member minutes are contained within the minutes binders which you have already inspected. Your dissatisfaction how committee minutes are taken is immaterial to the fact that the GLA has produced what it has.

- 3) All GLA board email votes and board email meeting minutes.

As has been explained to you before, the actions of the Board, including the outcome of email votes, are reported at the meetings and are captured in the meeting minutes which you have been given the opportunity to inspect.

- 4) All GLA financial records of receipts and expenditures (and profit and loss) since 2011.

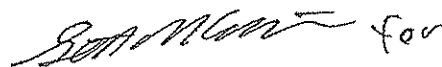
These records were previously provided for your inspection at the inspections on June 28, 2014, and July 8, 2014. Your claim that receipts and expenditures does not exist or has been misnamed because the GLA titles the document "profit and loss" is pointless quibbling. The profit and loss statement shows receipts and expenditures, and you have been given the opportunity to inspect it twice now.

Daniel and Valery O'Connell
July 22, 2014
Page 3

As previously agreed, the documents which were provided for your inspection on June 28, 2014 and July 8, 2014 will be provided to you electronically once the GLA has finished having them scanned. It is estimated this will take up to three weeks as there are over 17 years of documents to sort and bundle according to how the GLA wants them scanned. Further document requests will simply delay this work and prompt a request by the GLA for the Court to intervene.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Moran for", written in dark ink.

Michael P. Heringer

MPH:amr
Cc: Alyssa Allen
Dan Kehoe

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
Adam M. Shaw
Christine M. Cole

July 1, 2015

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027

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

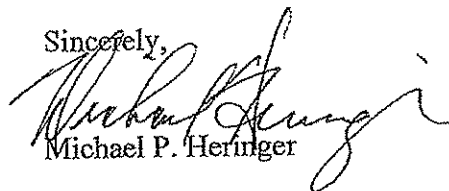
Retired
Rockwood Brown
John Walker Ross
Margy Bonner

Dear Mr. and Ms. O'Connell:

It has come to our attention that you left a recording device in room after the open board meeting on May 18, 2015 and recorded a portion of the closed session meeting. At the closed session meeting, the GLA board had a teleconference with their attorney to discuss the ongoing litigation. Leaving the recording device in the room was possibly a criminal offense under Mont. Code Ann. § 45-8-213. Further, it was a breach of the attorney-client privilege. Finally, you have compounded the breach by intentionally publishing information from the closed board meeting on your website www.mygla.org, an offense warranting sanctions by the Court.

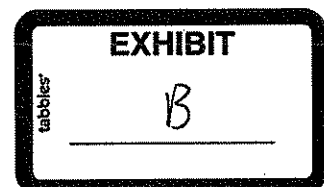
We request that you forward a copy of the recording to us for review, destroy any remaining copies, remove the information regarding the recording from your website, and agree to enter a stipulated protective order prohibiting the publication, reference, or use of the recorded information in anyway. If you do not agree to these terms, we will move for a protective order from the Court, the attorney fees and costs incurred in the motion, and all sanctions allowed by law.

Sincerely,



Michael P. Heringer

MPH:saw



B-1

From: Daniel O'Connell <dco@mac.com>
Sent: Sunday, July 05, 2015 8:38 PM
To: Robert Wallace; Charlette Mizzi; Scott & Valerie McBride; Rudy Parker; Janice McCann; Dan Kehoe; Gerald Dubiel; GLA email Box; Rudy Parker; Ed Dobrowski; Robert Branson; Marian Kozlick; Catherine Bielitz Fitzgerald; Kevin Newby; Gerald Dubiel; Robert Branson; Paul Rantallo; Michael Heringer; Sandy Williams
Cc: mcarver@paynewest.com; klingscheit@paynewest.com; ccline@paynewest.com
Subject: O'Connells' Partial Response to GLA/Brown letter dated July 1, 2015 and warning of insurance fraud

Date: July 5, 2015

To: GLA Board & Brown Law Firm (Atten: Michael Heringer)

cc to: Payne West Insurance Company (GLA insurance company in Butte, MT.)

From: Dan and Val O'Connell

Re: GLA attorney letter dated July 1, 2015 threatening to sue O'Connells for recording GLA Board on
2015

May 18,

Dear GLA Board & their attorney—M. P. Heringer (Brown Law Firm),

Insurance fraud warning: Your latest letter dated July 1, 2015 entitled “O’Connell v. Glastonbury Landowners Association” cites new legal claim(s) never made before against the O’Connells; which claim(s) have nothing to do with your claims in the pending case DV-11-114. Instead, this protective order called for by your client—GLA Board entails the GLA Board (per §40-15-204 (part 8) MCA.) “to file a petition for an order of protection;” which court term “petition” is commonly know as a lawsuit. All GLA attorney costs and fees associated with this protective order are not covered by insurance under this lawsuit, and any attempts to make such insurance claim or to file motion claims under this existing lawsuit will be opposed and legally challenged as possible insurance fraud and more.

This email is also the O’Connells partial response to GLA/Brown letter dated July 1, 2015, about a nonspecific publication on www.mygla.org; demanding confiscating member recordings; and threatening a lawsuit against O’Connells regarding their recording of the GLA Board on May 18, 2015. Note that www.mygla.org is member owned and operated cite, and any GLA member can contribute content.

In your letter your client—the GLA, make several false assumptions and errors; also your letter does NOT state what specific content on the website www.mygla.org that the GLA objects to; also your letter fails to state, with any particularity, what therein on this website does your GLA client refers to that allegedly: “breach[ed] [the attorney-client privilege] by intentionally publishing information from the {GLA} closed board meeting on your website www.mygla.org, an offense warranting sanctions ... [and] a protective order from the Court...” This protective order called for by your client—GLA Board entails the GLA Board (per §40-15-204 (part 8) MCA.) “to file a petition for an order of protection;” which court term “petition” is commonly know as a lawsuit.

Please understand that without your citing specific published words or phrases that you know are attributed to the O’Connells, then they will not and can not possibly comply with your demands to confiscate their property involving a recording of the GLA Board. Nor can they fully and properly respond to your letter until and unless you state, with particularity, what if anything, therein published on the member owned website (www.mygla.org) is a “breach” of the attorney-client privilege.

In the mean time, the O’Connells believe that your letter in question appears to be false reports against them by your client—the GLA Board without any basis in law. If your client—the GLA does file a suit or any legal action against the O’Connells based on such false reports, this action would warrant a countersuit against the GLA for violating state law §35-2-213 MCA for such GLA “acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; [&] a breach of the director’s duty of loyalty to the [GLA] Corporation or its members.”

Sincerely,

Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027

From: Daniel O'Connell <dko@mac.com>
Subject: [GLA Board List] Members written request to inspect and copy various GLA documents (within 5 business days)
Date: July 6, 2015 12:52:04 PM MDT
To: Robert Wallace <robhw@wispwest.net>, Charlette Mizzi <mizzi@wispwest.net>, Scott & Valerie McBride <valerie144@gmail.com>, Rudy Parker <itsme@rudyparker.com>, Janice McCann <mccanns8@gmail.com>, Dan Kehoe <dankehoegla@gmail.com>, Gerald Dubiel <gpdubiel@yahoo.com>, GLA email Box <info@glamontana.org>, Rudy Parker <itsme@rudyparker.com>, Ed Dobrowski <ed@wispwest.net>, Robert Branson <robranson@bigsky.net>, Marian Kozlick <nvcgiraffe1220@yahoo.com>, Catherine Bielitz Fitzgerald <catherinesb3@gmail.com>, Kevin Newby <kg_newby@yahoo.com>, Gerald Dubiel <gpdubiel@yahoo.com>, Robert Branson <robranson@bigsky.net>, Paul Rantallo <paulrantallo@mail.com>
Reply-To: board@glamontana.org
2 Attachments, 19.8 KB



Date: July 6th, 2015
To: GLA Board
From: GLA Members Dan and Val O'Connell
PO Box 77
Emigrant, MT. 59027 ((parcel 5C North)
Re: Members written request to inspect and copy various GLA documents (within 5 business days)

Disclaimer: This request is solely a member request, not part of any lawsuit (DV-11-114). If any part of this request is objected to, then any other documents requested (not objected to) must still be made available within 5 business days.

Purpose of document inspection and copies: This request to inspect & copy such GLA records are made in good faith and for a proper purpose to gather information for our member records; and to use such information to solicit member awareness and/or votes; also for any upcoming election to be held by the corporation. All records requested are directly connected with these purpose(s), and not to be used by us for any commercial purpose, or sold to or purchased by any person.

GLA Documents requested to be inspected and copied by us members (within 5 business days) are as follows:

- 1) All GLA receipts and expenditures for the last 2 years (including check details and cancelled checks)
- 2) minutes of all GLA meetings since Jan. 2014 (including email meeting minutes as "a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4)" pursuant to §35-2-906.)
- 3) The records of all actions approved by the members for the past 2 years; pursuant to §35-2-906
- 4) The financial statements available to members for the past 3 years under 35-2-911; pursuant to §35-2-906
- 5) A list of the names and business or home addresses of GLAs current directors and officers; pursuant to §35-2-906
- 6) Current GLA membership list; including all available "authenticated electronic identification" which includes e-mail addresses that the GLA has used to contact its members.

The 2012 settlement agreement between the GLA and O'Connells part one says, "GLA" Board of Directors will provide a current GLA membership list to the O'Connells upon request, but no more than two times a year." The law below does not require notice of a meeting nor does it define or limit what a membership list comprises; thus other law definitions of what a membership list comprises applies under §35-2-114 and §35-2-535 MCA:

In 2013, the Mt. Legislature amended the non-profit corporation act that defines non-profit corp. membership list and added "authenticated electronic identification" pursuant to 35-2-535, MCA part (1) that says, "The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting." Also, 35-2-114, MCA. says in part: " (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications." The GLA already collects or uses e-mail addresses of its members; for which copies of GLA member email addresses are hereby requested.

Thus state law and the 2012 settlement agreement allows us to have all GLA member addresses; including all available GLA members email addresses.

Sincerely,
Dan and Val O'Connell

Daniel K. O'Connell
Valley O'Connell

--
You are receiving this email via the "board@glamontana.org" email list. All communications between members of the board via this list are considered private and confidential and are NOT to be forwarded in whole or in part to any party not a member of the GLA Board of Directors.

Your participation in this group and the GLA Board of Directors indicates acceptance of these terms of privacy.

You received this message because you are subscribed to the Google Groups "GLA Board" group.
To post to this group, send email to board@glamontana.org.

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
Adam M. Shaw
Christine M. Cole

July 13, 2015

Daniel and Valery O'Connell
PO Box 77
Emigrant, MT 59027
dko@mac.com

Via U.S. Mail and Email

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 of July 5, 2015 responding to our request that you forward a copy of the recording taken at the May 18, 2015 GLA closed session board meeting to us for review, destroy any remaining copies, remove the information regarding the recording from your website, and agree to enter a stipulated protective order prohibiting the publication, reference, or use of the recorded information in any way. It is also in response to your July 6, 2015 email sent to the GLA board requesting to inspect various GLA documents.

First, since you reject our request regarding the unauthorized recording of the GLA closed session board meeting, we will file a Motion for a Protective Order and seek appropriate sanctions.

Second, your document inspection request violates our request that you make all such requests through discovery since your claims in the current lawsuit pertain to the GLA's alleged failure to accommodate document inspection requests. We warned you last year after your repeated requests that any future requests would prompt us to seek a protective order including appropriate sanctions. Therefore, our Motion will include this latest bad faith document request unless you withdraw it in writing immediately.

However, the GLA is providing you with a current membership list because the Settlement Agreement specifically provides that the GLA will provide a current membership list to you though not more than two times a year. This request constitutes one such list for 2015.

Finally, the officers of the board have been informed that during the May 18, 2015 board meeting, you removed meeting minutes from the GLA's corporate records for meetings held on November 17, 2014; December 8, 2014; January 19, 2015; February 9, 2015; February 16, 2015, and March 16, 2015. You were seen removing these minutes from

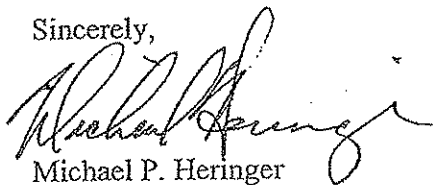
Retired
Rockwood Brown
John Walker Ross
Margy Bonner

Daniel and Valery O'Connell
July 13, 2015
Page 2

the binders holding previous meeting minutes. The minutes have not been returned despite a request from the secretary of the GLA during the June 15, 2015 board meeting. Our Motion will also ask the Court to order the return of the minutes and sanctions unless you immediately return the documents.

This letter constitutes yet another attempt to confer and a good faith effort to resolve these matters under Mont. R. Civ. P. 26(c)(1) before filing our Motion for a Protective Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Heringer". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael P. Heringer

MPH:saw
Enclosure

From: Daniel O'Connell <dko@mac.com>
Sent: Monday, July 13, 2015 6:40 PM
To: Robert Wallace; Charlette Mizzi; Scott & Valerie McBride; Rudy Parker; Janice McCann; Dan Kehoe; Gerald Dubiel; GLA email Box; Rudy Parker; Ed Dobrowski; Robert Branson; Marian Kozlick; Catherine Bielitz Fitzgerald; Kevin Newby; Gerald Dubiel; Robert Branson; Paul Rantallo; Michael Heringer; Sandy Williams
Subject: Response to Brown's Letter dated July 13, 2015

Date: July 14, 2015
To: GLA Board and attorney (Brown Law Firm)
From: Dan and Val O'Connell
Re: Response to Brown's Letter dated July 13, 2015

Your July 13, 2015 email letter we received is without any merit whatsoever and allegations against us are false or greatly exaggerated.

You seem to have a tolerance for causing us pain and suffering and emotional distress, all because we legitimately exercise our member rights. Your pleadings in the cases have also been rude, nasty, and extremely condescending of our person. We also believe your clients, the GLA Board spokesman is intentionally giving you false information about us, and do not give you all of the facts; and now threaten legal action against us in an apparent attempt to harass us, or to drop our lawsuit or drop new legal claims.

1) Regarding GLA meeting recording:

As we already stated in our July 5th email letter:

Note that www.mygla.org is member owned and operated site, and any GLA member can contribute content. In your letter your client—the GLA, make several false assumptions and errors; also your letter does NOT state what specific content on the website www.mygla.org that the GLA objects to; also your letter fails to state, with any particularity, what therein on this website does your GLA client refers to that allegedly: “breach[ed] [the attorney-client privilege] by intentionally publishing information from the {GLA} closed board meeting on your website www.mygla.org, an offense warranting sanctions ...[and] a protective order from the Court...” This protective order called for by your client—GLA Board entails the GLA Board (per §40-15-204 (part 8) MCA.) “to file a petition for an order of protection;” which court term “petition” is commonly know as a lawsuit.

Please understand that without your citing specific published words or phrases that you know are attributed to the O'Connells, then they will not and can not possibly comply with your demands to confiscate their property involving a recording of the GLA Board. Nor can they fully and properly respond to your letter until and unless you state, with particularity, what if anything, therein published on the member owned website (www.mygla.org) is a “breach” of the attorney-client privilege.

In the mean time, the O'Connells believe that your letter in question appears to be false reports against them by your client—the GLA Board without any basis in law. If your client—the GLA does file a suit or any legal action against the O'Connells based on such false reports, this action would warrant a countersuit against the GLA for violating state law §35-2-213 MCA for such GLA “acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; [&] a breach of the director's duty of loyalty to the [GLA] Corporation or its members.”

2) Regarding missing minutes:

Your firm has not made a good effort to get accurate facts, especially since there is a likely a good explanation of the missing minutes. For instance, the GLA has no proof and can not actually know who took copies of meeting

minutes. It is possible anyone of 28 members present at the May meeting took the minutes accidentally. The GLA Board has asked members to return the minutes; which we have a right to view and copy. However since this is the first and last time minutes have disappeared ever, then it is likely an accident and someone does not know it. If we accidentally took the minutes, they would be problematic to find in our huge file cabinet. If you can give us factual proof that we accidentally took them, then we would be glad to pay GLA copy charges at a reasonable rate of 10 cents per page to make new copies of such minutes.

Therefore, if we receive any more communication from your office about this matter of a protective order over missing minutes, we may be forced to sue your client and sue you personally for malicious prosecution.

3) Regarding our member document requests made July 6, 2015:

Your July 13, 2015 letter refuses to allow us to inspect requested documents requested (July 6, 2015), because you state our "document inspection request violates our [Brown Law Firm] request that you make all such [member document] requests through discovery since your claims in the current lawsuit pertain to the GLA's alleged failure to accommodate document inspection requests."

However, our document request made the following disclaimer that said, "**Disclaimer: This request is solely a member request, not part of any lawsuit (DV-11-114).**" This disclaimer should be enough to allow us to make requests as member for documents allowed to members, and not as litigants. Your requirement last year that all future document request be made through discovery is a violation of these state rights (under §35-2-906 MCA, §35-2-433 MCA, & other) that allow us to have such member documents.

If you still refuse to allow us as members to inspect such documents this week, then we will file a motion to include your latest bad faith document request and ask for appropriate sanctions against you and your client.

Regarding Membership list request:

It is obvious from your July 13, 2015 letter that you are not objecting to our stated purpose for documents we requested. As proof, you provided a partial membership list as one of the documents we requested as members.

However the partial membership list that you provided on behalf of the GLA does not follow the state law requirements, "The list must show the address or authenticated electronic identification and number of votes each member is entitled to vote at the meeting" and "who are entitled to vote at the meeting but not entitled to notice of the meeting."

In other words, the partial membership list in question that you provided is missing all the "authenticated electronic identification" (member email addresses); also missing the "number of votes each member is entitled to vote;" and also missing those "who are entitled to vote at the meeting, but not entitled to notice of the meeting" (which includes proxy voters).

As we said in our document request, in 2013, the Mt. Legislature amended the non-profit corporation act that defines non-profit corp. membership list and added "**authenticated electronic identification**" pursuant to 35-2-535, MCA part (1) that says, "The list must show the address **or authenticated electronic identification** and number of votes each member is entitled to vote at the meeting." Also, **35-2-114, MCA. says in part:** " (3) "Authenticated electronic identification" includes any e-mail address or other electronic identification designated by a user, including a corporation, for electronic communications." The GLA already collects or uses e-mail addresses of its members; for which copies of GLA member email addresses are hereby requested. Thus state law and the 2012 settlement agreement allows us to have all GLA member addresses; **including all available GLA members email addresses.**

Since you have failed to provide a complete membership list, our motion will include a second bad faith document request refusal unless you provide such completed membership list (as described above) immediately.

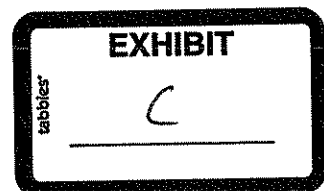
Sincerely,
Dan and Val O'Connell

Mygla.org

Together we are the GLA!

GLA President Kehoe Calls Members Nuts!

26 May 2015



After the May 18th, 2015 regular meeting, the GLA Board held a private meeting. Before it started and the members had left, Karleen McSherry (new GLA "administrative assistant) asked the Board, "does anyone want some nuts?" President Daniel Kehoe replied, "No, I've had my fill of nuts tonight."

For the record, earlier Kehoe sat in his seat for the entirety of the 2 hours where landowners were captive for the open Board meeting (there is a "private" Board meeting that follows). The landowners interviewed, who were in attendance, did not see Dan eat any nuts, and while many voiced disapproval of recent GLA Board actions, no one acted up. Since Kehoe did not so much as take a bathroom break either, it's safe to presume Kehoe was instead making his remark against some of these 28 landowners at the meeting that spoke out against the GLA Board.

Yet Kehoe was not alone in his opinion of such landowners he derisively called "nuts." A small minority of GLA Board Directors (not all) expressed approval with roaring laughter after Kehoe's remark.

Perhaps other Board members, that did not laugh, disapproved of the things Kehoe has done or said against

members. In the past 12 months, 4 new GLA Board Directors have suddenly quit the Board shortly AFTER taking office. Catherine Fitzgerald quit the GLA Board (Rudy Parker replacement) after Scott McBride quit (Kevin Newby replacement) now followed by Jim Kozlic who just quit the Board (replacement soon to be chosen). And last year, Donna Lash Anderson (Mizzi replacement) quit the GLA Board reportedly after what Alyssa Allen said or did.

These four Directors that suddenly quit are unfortunately not allowed to report what other Directors actually say or do, because of a little know GLA non-disclosure policy they are required to sign. This policy basically allows the Board to say and do whatever they like among themselves. (Note: we members only know about Kehoe's derogatory comment against members, because a member accidentally left his recorder on in the same room unbeknownst to Kehoe.) New GLA Directors may have quit the GLA Board rather than violate this GLA policy; which effectively is a gag order. In fact, Donna Anderson said as much after she quit.

When he thought no members were listening, GLA president Kehoe calls members derogatory names. As this was said to all other Directors, this encourages them to act the same, while Directors are yet gagged from

reporting such bad behavior to members.

Meanwhile, new drafts of their "Privacy Policy" show Kehoe and Allen have been working overtime to gag members too. Kehoe's latest "Privacy Policy" draft says it's a so called "protection of free speech." But it is obvious from reading this policy that Kehoe is doing just the opposite by suppressing member publication of free speech that this policy says, "prohibits the publishing of members' ... images, "audio and video recordings," and "votes" to the "internet" and other "public places." Kehoe and Allen basically want to stop members from publishing what Kehoe and other Directors actually say. In other words, Kehoe's draft "Privacy Policy" wants to ban member free speech on this website and any other member website by banning everything members publish concerning what the GLA Board says.

You should also be aware that at this same Board meeting, Kehoe admitted that his hand picked committee have rewritten many Covenants and Bylaws, such as Covenant 11.06 that will more than double member assessment interest rates; interest he calls "the prime interest rate" plus making members pay the current "simple interest rate."

So while dumping more interest rates on us members,

limit member rights by amending more Bylaws and Covenants; Kehoe and Allen also seek to gag members' free speech with a "Privacy Policy," rather than face healthy criticism. This was after Bolen and Allen already helped place a gag order on the GLA Board.

Furthermore, those landowners and past Directors interviewed for this article all agree, Kehoe and Allen have been using the lawsuit(s) to get member sympathy and support to limit other member rights, not just gag member free speech. This is no surprise, since those members Kehoe called "nuts" are likely the ones expressing their rights and free speech.

Can we honestly trust Kehoe to fairly represent all us members after this and his humiliating and intolerant remark against several GLA members that was said at a Board meeting of all places? Many elected officials lately have resigned over lesser offenses. As an elected official, is it fair to now ask for Kehoe's resignation instead of letting him head up the committee amending our Governing Docs?

Admin

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MONTANA TWENTY-SECOND JUDICIAL DISTRICT, CARBON COUNTY

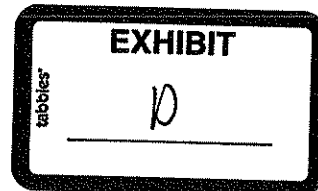
_____)
MICHAEL and DIANE SULLIVAN; JOY)
W. HUNT; DR. HERSCHEL R. and MARY)
BETH HARTER; JEFF and RENEE)
GILDEHAUS; ANDY and DIANE BERES;)
GARY and EMILY RUSSELL; STEVEN M.)
and LEIGH L. GOSE; WILLIAM L. and)
MARY WAGNER; MIKE KAUTZMAN;)
CATHERINE GROTT; DOUGLAS A. and)
JUDY K. BARNES; J. LANCE and MARY)
KAY DISSEL; RICHARD and JEAN ANNE)
BULLOCK; MARTHA L. BROWN; MARTY)
CLAGUE; and ELIZABETH FRAZER,)
Plaintiffs,)
vs.)
REMINGTON RANCH ASSOCIATION,)
INC.; THOMAS CHEREWICK; RONALD)
M. HENRY; and NANCY GAMMILL,)
Defendants.)

Cause No. DV 11-122

Judge: Blair Jones

ORDER GRANTING MOTION
FOR A PROTECTIVE ORDER

Before the Court is a *MOTION FOR A PROTECTIVE ORDER* filed on October 23, 2012 by Defendants Remington Ranch Association, Inc.; Thomas Cherewick; Ronald M. Henry, and Nancy Gammill (together, "Defendants"). Plaintiffs Michael and Diane Sullivan; Joy W. Hunt;



1 Dr. Herschel R. and Mary Beth Harter; Andy and Diane Beres; Gary and Emily Russell; Steven M.
2 and Leigh L. Gose; William L. and Mary Wagner; Mike Kaurzman; Catherine Grott; Douglas A.
3 and Judy K. Barnes; J. Lance and Mary Kay Dissel; Richard and Jean Anne Bullock; Martha L.
4 Brown; Marty Clague; and Elizabeth Frazer (together, "Plaintiffs") oppose the motion. After due
5 consideration of the briefs, together with the applicable law, the Court determines that
6 Defendants' motion should be granted.

7 STANDARD OF REVIEW

8 Rule 26(c), Mont. R. Civ. P. provides that a party from whom discovery is sought may
9 move for a protective order "specifying the terms, including time and place, for the discovery"
10 and "prescribing a discovery method other than the one selected by the party seeking discovery."
11 Rule 26(c)(1)(B) and (C), Mont. R. Civ. P. Such a party may make a motion upon "certification
12 that the movant has in good faith conferred or attempted to confer with other affected parties in
13 an effort to resolve the dispute without court action." Rule 26(c)(1), Mont. R. Civ. P. For "good
14 cause," a district court may issue an order to protect a party from "annoyance, embarrassment,
15 oppression, or undue burden or expense." *Id.*

16 DISCUSSION

17 A. Defendants' motion for protective order

18 In this case, Defendants request a protective order "forbidding further improper
19 communications from Plaintiffs to Defendants and forbidding further requests by Plaintiffs to
20 inspect or copy the RRA records except in the case of a formal discovery request." (Defs.' Br.
21 Supp. Mot. Protective Order 3.) Given the circumstances here, the Court determines that a
22 protective order is appropriate. Although § 35-2-907(1) and (2), MCA provides that members of
23 a corporation are entitled to "inspect and copy" certain corporate records under specified
24 conditions, such access is limited to a "reasonable time and location specified by the corporation."
25 Because the parties are in litigation where access to the records and the content of the records is at
26 issue, it is reasonable to require the parties to exchange such records through formal channels of
27 discovery. Doing so aids in identifying which records have been produced and the scope of the
28 requests and avoids inadvertent duplicity of effort and expense. Defendants' counsel has made

1 good faith attempts to resolve the dispute without court action, by actually accommodating
2 Plaintiffs' requests on two occasions and by multiple letters to Plaintiffs' counsel requesting the
3 use of formal discovery.

4 Furthermore, Plaintiffs fail to address Defendants' legitimate concern about improper
5 conduct between represented parties. Regardless of whether Plaintiffs—as parties—are entitled to
6 access RRA records under law or contract, it is at best questionable for an attorney to allow his or
7 her client to attempt to obtain discovery by direct contact with a represented opposing party.

8 Rule 4.2(a) of the Montana Rules of Professional Conduct provides that “[i]n representing
9 a client, a lawyer shall not communicate about the subject of the representation with a person the
10 lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent
11 of the other lawyer or is authorized to do so by law or a court order.” The Comment to the
12 identical ABA Model Rule 4.2 provides that this rule protects a represented person against “the
13 uncounselled disclosure of information relating to the representation.” The stated purpose of this
14 protection is “the proper functioning of the legal system.” MODEL RULES OF PROF'L CONDUCT, R.
15 4.2 cmt. (2012).

16 Although the issue at bar does not involve unauthorized attorney communications with a
17 represented opposing party, it does involve communications by an attorney's client directly to the
18 represented opposing party for information relating to the opposing party's representation.
19 Defendants have shown that Plaintiff Michael Sullivan contacted a represented defendant for
20 access to Remington Ranch Association records on at least three occasions: by letter dated
21 February 29, 2012 to the Defendant board members of the Remington Ranch; by letter dated May
22 17, 2012 to Defendant Tom Cherewick; and again by letter dated June 7, 2012 to Defendant Tom
23 Cherewick. (Defs.' Ex. B, E, and G.) At each instance, Defendants' counsel requested that
24 Plaintiffs' counsel make the demands as formal discovery requests to avoid confusion and to
25 create a record of what had and had not been produced.

26 It is improper for an attorney to circumvent the purposes of Rule 4.2 by encouraging his
27 or her client to engage in conduct prohibited to the attorney. Although no evidence indicates that
28 Plaintiff Michael Sullivan wrote the above listed letters at his attorney's direction, Defendants'

1 counsel had informed Plaintiffs' counsel of the situation and reasonably requested that
2 Defendants cease such conduct and employ formal channels of discovery. Regardless of what
3 Defendants believe they are entitled to obtain from Plaintiffs under law or contract, it is neither in
4 the spirit of Rule 4.2 nor does it foster the collegiality the Court expects from counsel for
5 Plaintiffs' counsel to encourage or allow a client to continue the contested behavior. It is
6 incumbent upon Plaintiffs' counsel to exercise client control and ensure that clients understand
7 both their rights as well as their obligations. The requests made by Defendants' counsel in this
8 regard were wholly reasonable and should have been honored by Plaintiffs' counsel.

9 **B. Defendants' motion for attorney fees**


10 Rule 37(a)(5)(A), Mont. R. Civ. P. provides that if a motion for protective order is granted,
11 "the court must, after giving an opportunity to be heard, require the party or deponent whose
12 conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the
13 movant's reasonable expenses incurred in making the motion, including attorney fees." Having
14 determined that a protective order is warranted in this case, the Court will set a hearing to
15 determine the movant's reasonable expenses incurred in bringing this motion under Rule
16 37(a)(5)(A), Mont. R. Civ. P.

17 For the reasons stated above,

18 **IT IS ORDERED** that Defendants' *MOTION FOR PROTECTIVE ORDER* is **GRANTED**.

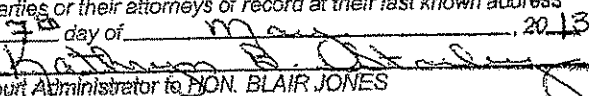
19 **IT IS FURTHER ORDERED** that a hearing on the issue of movant's reasonable expenses
20 in bringing this motion is hereby set on **Tuesday, the 18th day of June, 2013, at the hour of 1:30**
21 **p.m.** or as soon thereafter as counsel may be heard.

22 DATED this 7th day of May, 2013.

23
24 
25 **BLAIR JONES, District Judge**

26 cc: Kelly J. C. Gallinger Joel Todd
27 J. Michael Young Michael B. Anderson.
28 Tammy Wyatt-Shaw Brendon J. Rohan
Randall G. Nelson Calvin J. Stacey

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail or fax upon
the parties or their attorneys of record at their last known address
this 7th day of May, 2013
By 
Court Administrator to HON. BLAIR JONES