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15 *Attorneys for Respondents Glastonbury*  
16 *Landowners Association, Inc.*

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

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

20 Plaintiffs,

21 v.

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

25 Defendants.

Cause No.: DV-11-114

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' REPHRASED REQUESTS  
FOR DEFENDANT ADMISSIONS**

26 TO: Plaintiffs Daniel and Valery O'Connell:

27 Defendants respond to Plaintiffs' Rephrased Requests for Defendant Admissions, Second

28 Attempt as follows:

Objection: Defendants objects to service of these rephrased requests for admission by email dated December 2, 2014. Discovery must be served on a party. Mont. R. Civ. P. 5(a)(1)(C). If a party is represented, service must be made on the party's attorney. Mont. R. Civ. P. 5(b)(1). Service must be made by leaving it at the attorney's office or by mail. Mont. R. Civ. P. 5(b)(2)(A)-(B). Service may be made by electronic means if consented to in writing. Mont. R. Civ. P. 5(a)(2)(E). Defendants have not consented in writing to the service of discovery or other papers identified in Mont. R. Civ. P. 5.

1 Therefore, Plaintiffs failed to properly serve these discovery requests. Therefore, until properly served  
2 by mail, these discovery requests and the following answers should be inadmissible.

3 Without waiving the above objection,

4 **Requests #7:** Admit that from 2010 through 2013, GLA estimates that it yearly collected less than  
5 \$18,000 total in member assessments billed to members owning HIGH South Glastonbury lot numbers  
6 57 through lots 109 accessible only by Hercules Road, Polaris Road, or Sagittarius Roads. (**this**  
7 **Request rephrased for clarity**).

9 GLA failed to answer this request without knowing which member lots were considered. To  
10 answer this question, the specific lots numbers 57 through lots 109 in question were added. Also GLA  
11 member billing documents show how much assessments GLA yearly collects from each lot in South  
12 Glastonbury. Since the Request has been rephrased & explained to clarify an answer, please answer this  
13 request #7.  
14

15  
16 **ANSWER:** Admit. As an estimate the GLA collected approximately \$17,000 to \$18,000 from lots 57  
17 through 109 in South Glastonbury in yearly assessments.

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19  
20 **Requests #8-11** rephrased below can be answered by the GLA using the GLA budget reports submitted  
21 for monthly Board meetings in these years cited that show "Road Work" and "Snow Removal"  
22 specifically for "South Glastonbury" & "North Glastonbury (example: attached GLA 2012 budget  
23 report for "Road work" & "Snow Removal")":  
24

25 **Objection to Requests #8-11:** Defendant objects to these requests as Plaintiffs did not attach the  
26 'GLA 2012 budget report for "Road work" & "Snow Removal"' referenced, and therefore Defendants  
27  
28

1 cannot be sure what Plaintiffs are seeking in this request in regards to this attachment. However, the  
2 GLA will refer to its own financial documents for the years referenced in answering requests #8-#11.

3  
4  
5 **Requests #8.** Admit that in year 2010, for both North and South Glastonbury combined total road  
6 expenses spent for "Road Work" and "Snow Removal," the GLA spent more than 50% of these  
7 combined total road expenses on South Glastonbury Roads for "Road Work" and "Snow Removal" (see  
8 GLA Budget line items: "A13. SG Road Work" and "A02B & A02C. South Glastonbury Snow  
9 Removal," and North Glast. Road expenses include GLA Budget line items: "A12.NG Road Work" and  
10 ""A13. Road work" and "A02B. Snow Removal") (**Requests #8 rephrased for clarity**).

11  
12 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to "Road Work" and  
13 "Snow Removal" done in South and North Glastonbury. The line items referenced do not appear in the  
14 GLA budget. However, those line items are present in the receipts and expenditures report for 2010  
15 which catalogs expenditures. These line items do not accurately reflect the actual cost of road work and  
16 snow removal in regards to South versus North Glastonbury. These line items reference contractor  
17 expenses because much of the work was done by contractors. However, the GLA also used its own  
18 equipment to do road work and snow removal. The overhead of the GLA's equipment cost,  
19 maintenance and repairs, supplies, fuel, storage, insurance, and other overhead are not included in the  
20 line items referenced. These costs are reflected elsewhere in the report, but are not broken out by North  
21 or South Glastonbury. Therefore, the GLA does not have the ability to strictly calculate how much was  
22 spent in North Glastonbury versus South Glastonbury for road work and snow removal. The GLA has  
23 made reasonable inquiry into its financial records maintained according to generally acceptable  
24 accounting practices and those records are insufficient to enable the GLA to admit or deny this request.  
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1 Ultimately, there is no requirement spending must be 50/50, and so calculating expenses in this way is  
2 not required either.

3  
4 **Requests #9.** Admit that in year 2011, for both North and South Glastonbury combined total road  
5 expenses spent for “Road Work” and “Snow Removal,” the GLA spent more than 50% of these  
6 combined total road expenses on South Glastonbury Roads for “Road Work” and “Snow Removal” (see  
7 GLA Budget line items: “A13. SG Road Work” and “A02B & A02C. South Glastonbury Snow  
8 Removal,” and North Glast. Road expenses include GLA Budget line items: “A12.NG Road Work” and  
9 ““A13. Road work” and “A02B. Snow Removal”) (**Requests #9 rephrased for clarity**).

10  
11  
12 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to “Road Work” and  
13 “Snow Removal” done in South and North Glastonbury. The line items referenced do not appear in the  
14 GLA budget. However, those line items are present in the receipts and expenditures report for 2010  
15 which catalogs expenditures. These line items do not accurately reflect the actual cost of road work and  
16 snow removal in regards to South versus North Glastonbury. These line items reference contractor  
17 expenses because much of the work was done by contractors. However, the GLA also used its own  
18 equipment to do road work and snow removal. The overhead of the GLA’s equipment cost,  
19 maintenance and repairs, supplies, fuel, storage, insurance, and other overhead are not included in the  
20 line items referenced. These costs are reflected elsewhere in the report, but are not broken out by North  
21 or South Glastonbury. Therefore, the GLA does not have the ability to strictly calculate how much was  
22 spent in North Glastonbury versus South Glastonbury for road work and snow removal. The GLA has  
23 made reasonable inquiry into its financial records maintained according to generally acceptable  
24 accounting practices and those records are insufficient to enable the GLA to admit or deny this request.  
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1 Ultimately, there is no requirement spending must be 50/50, and so calculating expenses in this way is  
2 not required either.

3  
4 **Requests #10.** Admit that in year 2012, for both North and South Glastonbury combined total road  
5 expenses spent for “Road Work” and “Snow Removal,” the GLA spent more than 50% of these  
6 combined total road expenses on South Glastonbury Roads for “Road Work” and “Snow Removal” (see  
7 GLA Budget line items: “A13. SG Road Work” and “A02B & A02C. South Glastonbury Snow  
8 Removal,” and North Glast. Road expenses include GLA Budget line items: “A12.NG Road Work” and  
9 ““A13. Road work” and “A02B. Snow Removal”) (**Requests #10 rephrased for clarity**).

10  
11  
12 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to “Road Work” and  
13 “Snow Removal” done in South and North Glastonbury. The line items referenced do not appear in the  
14 GLA budget. However, those line items are present in the receipts and expenditures report for 2010  
15 which catalogs expenditures. These line items do not accurately reflect the actual cost of road work and  
16 snow removal in regards to South versus North Glastonbury. These line items reference contractor  
17 expenses because much of the work was done by contractors. However, the GLA also used its own  
18 equipment to do road work and snow removal. The overhead of the GLA’s equipment cost,  
19 maintenance and repairs, supplies, fuel, storage, insurance, and other overhead are not included in the  
20 line items referenced. These costs are reflected elsewhere in the report, but are not broken out by North  
21 or South Glastonbury. Therefore, the GLA does not have the ability to strictly calculate how much was  
22 spent in North Glastonbury versus South Glastonbury for road work and snow removal. The GLA has  
23 made reasonable inquiry into its financial records maintained according to generally acceptable  
24 accounting practices and those records are insufficient to enable the GLA to admit or deny this request.  
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1 Ultimately, there is no requirement spending must be 50/50, and so calculating expenses in this way is  
2 not required either.

3  
4 **Requests #11.** Admit that in year 2013, for both North and South Glastonbury combined total road  
5 expenses spent for “Road Work” and “Snow Removal,” the GLA spent more than 50% of these  
6 combined total road expenses on South Glastonbury Roads for “Road Work” and “Snow Removal” (see  
7 GLA Budget line items: “A13. SG Road Work” and “A02B & A02C. South Glastonbury Snow  
8 Removal,” and North Glast. Road expenses include GLA Budget line items: “A12.NG Road Work” and  
9 ““A13. Road work” and “A02B. Snow Removal”) (**Requests #11 rephrased for clarity**).

10  
11  
12 **ANSWER:** The GLA cannot truthfully admit or deny this request in regards to “Road Work” and  
13 “Snow Removal” done in South and North Glastonbury. The line items referenced do not appear in the  
14 GLA budget. However, those line items are present in the receipts and expenditures report for 2010  
15 which catalogs expenditures. These line items do not accurately reflect the actual cost of road work and  
16 snow removal in regards to South versus North Glastonbury. These line items reference contractor  
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19 maintenance and repairs, supplies, fuel, storage, insurance, and other overhead are not included in the  
20 line items referenced. These costs are reflected elsewhere in the report, but are not broken out by North  
21 or South Glastonbury. Therefore, the GLA does not have the ability to strictly calculate how much was  
22 spent in North Glastonbury versus South Glastonbury for road work and snow removal. The GLA has  
23 made reasonable inquiry into its financial records maintained according to generally acceptable  
24 accounting practices and those records are insufficient to enable the GLA to admit or deny this request.  
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1 Ultimately, there is no requirement spending must be 50/50, and so calculating expenses in this way is  
2 not required either.

3  
4 **Request # 39:** Please admit, that for the first time after the Nov. 2011 elections, the GLA started to  
5 “publish GLA election vote tallies. (this Request has been rephrased for clarity.)  
6

7 **ANSWER:** Deny. The GLA has announced and published election tallies in years prior to November  
8 2011 elections.

9  
10  
11 **Request 39[sic].** Admit for this complaint that Defendant Directors appear to have conceded on at least  
12 2 complaint claims showing these claims have merit: 1) Bolen & Allen Oct. 2013 depositions Discovery  
13 Request #7 admit the GLA began to publish GLA election tallies in the GLA newsletter;” & 2) Bolen &  
14 Allen Oct. 2013 depositions also admit that they never furnished members with “Receipts and  
15 Expenditures” until after this lawsuit claim was filed June 2011.”  
16

17  
18 Request #39 and quoted part has to do with the September 2013 written deposition answers from the  
19 GLA called, “Defendants’ Response to Plaintiffs’ Reply & More Partial Discovery Requested for Docs  
20 & Admissions.” The GLA can and should answer this Request #39 by referring to its “Discovery  
21 Request No.7” on page 7 of that document.  
22

23 **ANSWER:** Objection: Defendants have no record of “Bolen & Allen Oct. 2013 depositions” and do not  
24 know what Plaintiffs are referring to. Therefore, Defendants cannot answer this request as it pertains to  
25 these unknown depositions.  
26

27 Without waiving that objection, Defendants deny this request. Neither the GLA nor its Board of  
28 Directors have conceded any of Plaintiffs’ claims have merit. To the best of the GLA’s knowledge,

1 Plaintiffs did not allege claims involving election tallies in newsletters or receipts and expenditures in  
2 the original Complaint filed in June of 2011. The Amended Complaint filed in 2013 supersedes the  
3 original Complaint and does not relate back because the claims asserted are different as well as the  
4 parties. The Amended Complaint makes no allegations regarding vote tallies in the newsletters, and it  
5 alleges the GLA denies members the receipts and expenditures statement which is not true.  
6

7 From January 2009 through September 2011, the GLA presented receipts and expenditures for  
8 January through October of the year at the annual meeting in the form of a Budget Variance report that  
9 gave details of income and expenses to date along with a proposed budget. The receipts and expenditure  
10 statement for the preceding fiscal year was not at the annual meeting nor mailed due to an oversight and  
11 the interest of the members was on the current financial picture. Such reports would be available to  
12 members upon request. Presentation of the GLA's financial state was done this way for years prior to  
13 2009 through 2011 as well. Daniel O'Connell was a board member from November 2009 through  
14 August 2011, and the receipts and expenditures statements were available to him as a board member.  
15 Therefore, the failure to present any documents at the annual meetings for that time is attributable to  
16 him as well. At the time the Amended Complaint was filed, the receipts and expenditures statements  
17 were being mailed out to members. It was never "denied" to members, but any claim that failure to mail  
18 it constitutes "denying" it to members was moot at the time the Amended Complaint was filed.  
19  
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22 The response to discovery request no.7 in "Defendants' Response to Plaintiffs' Reply & More  
23 Partial Discovery Requested for Documents & Admissions" states as follows:  
24

25 DISCOVERY REQUEST NO. 7: After this lawsuit was filed June 2011 requesting such vote  
26 tallies, GLA Defendants now respond that since 2011, it started to publish GLA election vote  
27 tallies in the GLA newsletter. Plaintiffs request copies of ALL GLA newsletters since 2011 to  
28 verify this response.



1           **RESPONSE:** See GLA newsletters since 2011 produced and bates stamped as documents  
2           000479 – 487. (Sep. 11, 2013).

3 Again, the Amended Complaint supersedes the original Complaint filed in 2011 and does not relate  
4 back. Even so, to the best of the GLA’s knowledge neither the original Complaint nor the Amended  
5 Complaint allege a claim regarding the GLA’s publishing vote tallies. The GLA has announced its  
6 voting results since its inception and records them on notarized tally sheets. The specific number of  
7 votes each candidate received was not published via newsletter (but was available upon request) to  
8 protect the dignity of the losing candidate. In 2011, the GLA started publishing the number of votes  
9 each candidate received via newsletter because members expressed interest in knowing the number of  
10 votes each candidate received—not as a result of any lawsuit the Plaintiffs have filed.  
11  
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14           **Request #44.** Admit that from 2010 through 2014, the GLA took action by written consent without a  
15 meeting via requesting email votes cast by 2/3rds GLA Board members.  
16

17           The GLA did NOT answer this Request #44 that asks the GLA Board to admit that they took  
18 votes by written consent via email without a meeting for these years. The GLA instead gave an  
19 unrelated answer that they “follow Bylaw Article VI.3....” Please answer Request #44 above with  
20 “admit” or “deny” and explain any denial.  
21

22           **ANSWER:** Objection. The GLA answered this request for admission already and does not understand  
23 why Plaintiffs are claiming it was not answered.  
24

25           To clarify: Admit. The GLA took action by written consent without a meeting via the procedures  
26 in Bylaw Article VI.J Action by Written Consent.  
27  
28

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

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

7 **ANSWER:** Admit. At the next regular board meeting, all actions by written consent were ratified by the  
8 board, and on advice of counsel, the board was informed that such ratification obviated the need for  
9 attaching the emails because ratification made the emails unnecessary.  
10

11 DATED this 3<sup>rd</sup> day of January 2015.


12  
13 BROWN LAW FIRM, P.C.

14 By: 

15 Michael P. Heringer  
16 Seth M. Cunningham  
17 Attorneys for Glastonbury  
18 Landowners Association, Inc.  
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I attest that the foregoing answers are true and correct to the best of my knowledge.

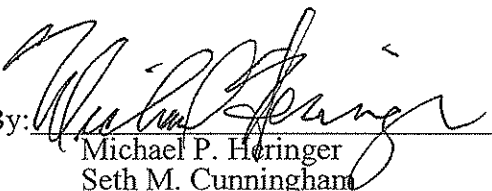
Glastonbury Landowners Association, Inc.  
By:   
President/Glastonbury Landowners  
Association, Inc.

1  
2 CERTIFICATE OF SERVICE

3 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,  
4 postage prepaid, and addressed as follows this 30<sup>th</sup> day of January, 2015:  
5

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

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

12  
13 By:   
14 Michael P. Heringer  
15 Seth M. Cunningham  
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