

PRO SE
Daniel & Valery O'Connell
P.O. Box 77
Emigrant, Mt. 59027
406-577-6339

PARK COUNTY CLERK
OF DISTRICT COURT
JUDICIAL TITLE

2011 NOV 10 PM 3 16

FILED
ORLINA HUNSAKER

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O'Connell & Valery A. O'Connell)
& for and on behalf of members of the)
Glastonbury Landowners Association.)
Plaintiff(s),)
v.)
Glastonbury Landowners Association, Inc.)
(the GLA Corporation))
Defendant(s))

Cause No. DV-11-193

**CIVIL COMPLAINT FOR COURT
ORDER (Amended)**

Comes now Plaintiff(s), Daniel O'Connell, Valery O'Connell, & for and on behalf of the members of the Glastonbury Landowners Association (herein called the GLA), and pray this Court for issuance of a Civil Order to retroactively cancel and reschedule the GLA Annual Meeting and order the Defendant to serve Plaintiffs with a copy of the GLA member list as Plaintiffs' claims for Relief, on grounds more fully set forth below. This Petition is brought pursuant to applicable MCA statutes governing Montana non-profit corporations including §35-2-535 et seq, MCA, and MCA Rules of Civil Procedure, and the facts, claims, and the attached Exhibits herein together with any further evidence that may be adduced by this Court. In support of this Complaint, Plaintiffs aver as follows:

I. BACKGROUND

1. The Plaintiff(s), Daniel O'Connell, Valery O'Connell and GLA landowners, as such

O'Connell Complaint/Order for GLA, pg. 1 of 1

property owners within the subdivisions called “North Glastonbury” and “South Glastonbury,” are members in good standing of the Glastonbury Landowners Association Corporation (GLA), and this Defendant is a Montana mutual benefit non-profit corporation.

2. **Defendant’s (GLA) Covenant 10.01.** states in part, “Association’s Authority. The Association is the sole administrative authority in the Community and shall exercise its rights, powers and responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules.”
3. Starting on July 16th, 2011 and continuing until Oct. 20, 2011, the Plaintiffs, in good faith and for proper purpose, made several oral and written demands (see attached “Exhibit A”) to inspect and **COPY** the current list of Defendant’s GLA membership records (names and contact information for election purposes) held in the custody of such GLA authorized agents and Directors for the GLA Corporation (Defendant).
4. The Defendant Directors repeatedly denied Plaintiffs the right to inspect and **COPY** the Defendant’s current GLA member list for meeting election purposes. New meeting elections are on Nov. 12, 2011, two days as of this filing (July 14th, Aug. 9th, and Sept. 14th) as Defendant’s GLA Board meeting dates when the GLA Board refused Plaintiffs’ **oral demands** to view and copy the GLA member list. July 16th, Aug. 20th, and Oct. 13th are dates of Plaintiffs’ **written demands** to the GLA Board to view and copy the GLA member list (“Exhibit A”).
5. As of this filing, the Plaintiffs, as Board candidates, have not been allowed to copy any

GLA member list for the stated purpose for this election meeting, nor for use in the previous election on Aug. 17th, when Mr. O'Connell was denied such member list for the purpose of defending his seat on the GLA Board. Without such GLA member list (with the exception of some addresses known by Plaintiffs), Mr. O'Connell had no way to contact over 450 GLA members to defend his Board position on Aug. 17, 2011. And for the meeting election on Nov. 12, 2011, the Plaintiffs had no way to contact over 450 GLA members with Plaintiffs' campaign materials, nor send out our their candidate flyers.

6. It is too late for Plaintiffs to campaign for this election on Nov. 12th, and since on Oct. 12 GLA Defendant Directors mailed ballots to all members (see "Exhibit B"), and several members have already cast their ballots.

II. STATEMENT OF FACTS and DISCUSSION OF ISSUES

7. GLA Bylaw Art. VIII I. states, "**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." (Notice this Bylaw does not prohibit copying the member list).
8. Bylaw Art. VIII. I. is compatible with GLA Bylaw Art. II. A. which states that the Bylaws and Covenants are "pursuant to the nonprofit corporation statutes of the State of Montana."
9. These two Bylaws above are thus compatible with nonprofit corporation statute 35-2-535,

MCA. that states in part,

“(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.”

10. As GLA members, the Plaintiffs were denied their rights stated above when the Defendant Directors and agents for the GLA Corporation refused Plaintiffs a copy of the GLA member list (see “Exhibit A,” pgs. 2 & 6) since Plaintiffs gave three written demands for a member list starting in July 16th, 2011.
11. Over 80 days have passed since August 20, 2011, when Plaintiffs’ second written demand was sent to all Defendant Directors and agents (see “Exhibit A,” pg. 3): which demand also quoted the entire statute 35-2-535, MCA. cited above. The Defendant Directors again refused Plaintiffs demand to view and copy GLA member list, even after a stern warning that a refusal to provide such member list to the Plaintiffs was grounds for a lawsuit under this statute.
12. On Oct. 12, 2011 GLA Defendant Directors mailed ballots for the Nov. 12th GLA meeting to all members (see “Exhibit B”), and several members have already cast their ballots before this meeting.
13. The Defendant Directors also mailed these election ballots (see “Exhibit B”) together with a derogatory letter (see “Exhibit C”) about the O’Connells recent lawsuit against

the GLA Board. The Defendant's letter obviously may have already influenced some voters to vote against the O'Connells as troublemakers, since the letter describes their lawsuit as "groundless." GLA Defendant Directors used such GLA member list to mail this derogatory letter about the Plaintiffs to all 450 plus members in the same envelope as the election ballots, so that such letter may immediately sway such votes against the O'Connells. (Note: Defendant's actions are equivalent to having this Court's Judge run against Defendant Directors for the same office. But you, the judge, do not get a campaign list of registered voters, so you can not contact all voters. But Defendant Directors have a campaign list of voters, so only the Defendant(s) are able to contact all voters, not you. And only the Defendant(s) can receive or call GLA voters (see case DV-11-85, complaint pg. 4 & 5 attached as "Exhibit D") and run a smear campaign against you using derogatory letters and lies that you are helpless to defend against nor respond, as you have no voter list to contact voters.)

14. Defendant Directors have thus used such member list against the Plaintiffs several times, but continue to refuse Plaintiffs' a copy of the same member list. The Defendant's Directors have therefore effectively barred both Plaintiffs from contacting GLA voters before the Nov. 12th meeting; which Defendant actions thus irreparably harmed the election campaigns of both Plaintiffs' as candidates for the GLA Board of Directors; and fatally harmed Plaintiff's cause to defend his Board seat on Aug. 17, 2011; and further caused harm to the Plaintiffs reputations as Plaintiffs have no way to contact all GLA voters to refute the Defendant's derogatory letters.

15. Also in this mailing on Oct. 12th, Defendant Directors created and sent a proxy ballot (“Exhibit B”) designating themselves as the “GLA Board of Directors” to vote on behalf of the member. However, this is illegal since GLA Bylaws do not allow Directors to vote for directors elected by members.

16. To explain, GLA Bylaw Art. V.F. says in part,

“each **Member** in good standing as defined in the Covenants, or any person designated by them to act as proxy on their behalf (who need not be a Member), shall be entitled to cast the vote(s) . . . at all meetings of the Members.”

Bylaw Art. V. B. says in part, “the Annual Meeting of the Association shall be held on the same day of each succeeding year or, if a legal holiday, on the next business day following, or at a date specified by resolution of the Board of Directors. **At such meeting there shall be elected, by the ballot of the Members, a Board of Directors.**”

17. Therefore, the Defendant’s annual meeting is a meeting of members where the “Board of Directors are “elected, by the ballot of the members.” And Bylaw Art. V. F. (6) below states only a “person,” or “member representative” or “member of record” can cast proxy ballots, or vote as follows:

Bylaw Art. V. F.(6) states in part, “**Designation of Proxy;**” “Any Member may designate **any person** to vote as proxy on his or her behalf. To be valid, a proxy must be in writing, dated, executed by the **Member of record or legal representative of such Member** and filed with the Secretary before or at the appointed time for a meeting.”

18. This Bylaw together with GLA Bylaw Art. VI. B. above clearly forbids Directors from voting (or acting) as “member representative” or as a “member of record.” That is because proxy “ballots of the Members” cast at annual meetings is clearly an action done by members and such acts of members can not be done by Directors, because the bylaw below demands “Directors at ALL times shall act as a Board” as follows:

GLA Bylaw Art. VI. B. says in part, "**B. General Powers and Duties.** The business and affairs of the Association shall be managed by the Board of Directors. Such Directors shall in all cases act as a Board which shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts or things as are NOT by law or by the Covenants, Bylaws or Articles of Incorporation directed to be exercised and done by the Members. (emphasis added)

19. Defendant Directors may argue that non-members can cast proxy votes. Yes, but only GLA members can run for the GLA Board, so Directors can not be considered non-members either. And, since Defendant "Directors at ALL times shall act as a Board," there is no time in which the Defendant Directors can take off his Director hat, nor act as a "member representative." Yet for many years, this is the very action of members illegally done by directors designating the "GLA Board of Directors" to vote as a "member representative." Therefore, GLA Bylaws do not allow Directors to vote for directors, nor cast up to 80 or more member proxy ballots for themselves as Directors, and neither does applicable laws as follows:

20. The Defendant corporation is under the jurisdiction MCA. laws which govern such non-profit corporation describing voting at meetings of members to be a member action, not done by Directors as per:

5-2-536, MCA. "Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members." And under **35-2-526, MCA. "Annual and regular meetings.** . . . 4(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of **35-2-530** and **35-2-538(2)**" which says, "**Voting requirements.** (1) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, if they are a majority of the required quorum, is the act of the members. (2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members."

21. There is no doubt that proxy votes are a member action which GLA Bylaw Art. VI. B. clearly forbids Directors acting as “member representative” or as a “member.” Therefore, an action done by members, such as casting proxy ballots, can not be done by Directors because “Directors at ALL times shall act as a Board.” This Bylaw is at the heart of what is wrong with many actions by Defendant Directors that think they have all the powers of members and all the powers of Directors at the same time. So for years at annual meetings including this Nov. 12th annual meeting, Defendant Directors cast up to 80 or more proxy votes for themselves to keep themselves in power. (as proof: six GLA directors are elected yearly, which is 42 seats in seven years, but only four new directors have been elected in seven years to these 42 seats. It is no coincidence that 5 people are running against Plaintiffs in North Glastonbury, but no Board candidate is opposed in South Glastonbury. Some Defendant Directors have asked their friends to run against candidates they do not like to further sway elections, before the ballots are printed. Director, Laura Boise, asked former friend, Mr. O’Connell, to run for the Board in 2009 for this purpose.)
22. On Monday Nov. 7, 2011, the remaining nine GLA Directors cast their votes to reelect themselves and other Board candidates, as Plaintiffs’ complaint (DV-11-114) warned would and did happen (see “Exhibit F” GLA Agenda and meeting summary). The Board Defendants “confidential[ly]” voted to cast potentially* one third of the votes for passage of a special assessment (estimated \$18,000 in revenues) to be spent by the Defendant Directors.

This expatiated Court Order stops these so called "confidential voting results" at the Nov. 12th "annual meeting." And the Defendant Directors vigorously stopped the Plaintiffs from having a member list copy to inform members of these and more campaign truths.

Can you imagine any election allowing nine incumbents (Defendants) to cast up to 80 votes confidentially, and also count the votes in secret, and verify the results in secret, that reelect themselves by casting up to one third of their own "confidential votes" (proxy votes)? Therefore, as GLA Defendants' agenda states, so called "confidential voting results" took place, and this complaint, stops such inherently corruptible elections and allows reasonable time for Plaintiff candidates to receive a membership copy for campaigns.

III. PARTIES; JURISDICTION; and VENUE.

23. Since the Defendant corporation is situated and has a place of business within Park County where this civil complaint is filed, then Jurisdiction and Venue is proper in this Sixth Judicial District Court of Park County, Montana as allowed per:

§27-28-105, MCA. "Jurisdiction and venue. An action under this chapter can be brought in the supreme court of the state or in the district court of the county in which the defendant or one of the defendants resides or is found or, when the defendant is a corporation, in the county in which it is situated or has a place of business."

24. Also, due to the Defendant Director's actions described herein, the Plaintiff's power to act in bring this complaint is appropriate as allowed per:

GLA Bylaw Art. VIII. I. and Art. II. A. which states that the Bylaws and Covenants are "pursuant to the nonprofit corporation statutes of the State of Montana," and thus compatible with nonprofit corporation statute 35-2-535, MCA. part (4);

“(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.”

IV. PRAYER FOR RELIEF

25. As per the above 35-2-535, MCA. part (4), Plaintiffs seek a Court Order to retroactively cancel and reschedule the GLA Nov. 12th annual meeting 2011, until sometime after Defendants are Ordered to hand over a copy of all GLA member lists for such meeting elections as allowed per this statute 35-2-535, MCA. part (2).
26. Plaintiffs ask that within such Court Order for a member list and nullify the Nov. 12, 2011 GLA meeting election results, such Order state: a. this meeting results are nullified and rescheduled six weeks after Plaintiffs receive such member list; b. giving time for mailing of notice of such new meeting date immediately after this; c. and time to mail new meeting ballots no earlier than two weeks after the Plaintiffs receive a copy of the GLA member list. Such Court Orders will thus assure that proper notice of a new meeting date is given (especially to many members living out of the country) and proper time for Plaintiffs to campaign. It would serve little purpose to give Plaintiffs this member list without also allowing such reasonable time of two weeks to campaign.
27. Plaintiffs also pray that for this rescheduled meeting and for all future Defendant meetings,

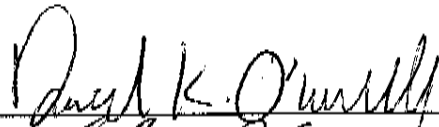
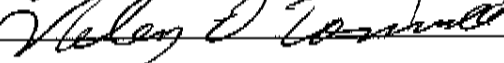
this Court ban the long term practice of Defendant Directors casting up to one third of the total membership votes that illegally lets Directors cast ballots as “member representatives.” Thereby Directors cast up to eighty or more proxy votes for themselves and other Director candidates. This is why unwanted candidates have never won a seat on the Board without votes from Directors casting votes for themselves; which Plaintiffs contend is in violation of GLA Bylaws and MCA laws cited in paragraphs 16 through 21 above.

28. Plaintiffs pray the GLA Boards’ action of “confidential vote results” which are secret votes be banned, and all GLA vote counts of each candidate or issue(s) be publicized to all GLA members; and all voting verification be independently verified by landowners who request them at the meeting, done before results are approved by the GLA secretary.

29. The Plaintiff(s) also ask this Court to allow Defendants to pay nominal and reasonable legal fees, and costs incurred by Plaintiff(s) in bringing this Complaint, and pay any other costs incurred to send such new meeting notices to GLA members.

(NOTE: SUCH NEW COMPLAINT IS NECESSARY, BECAUSE PLAINTIFFS COMPLAINT (DV11-114) has already been argued by all parties, and DID NOT INCLUDE THESE NEW CLAIMS (prayer) FOR RELIEF above).

Respectfully submitted this 12 day of November, 2011.

By:  Daniel K. O'Connell
By:  Valery A. O'Connell

Certificate of Service

We, Daniel and Valery O'Connell attest that a true and correct copy of the Plaintiffs "CIVIL COMPLAINT FOR COURT ORDER" and "Certificate of Service" was sent to all the Defendants via: *(Amended)*

Hand delivered by process server this 12 day of November, 2011, to the following parties and address:

The Glastonbury Landowners Association, Incorporated.
c/o Janet Naclerio, Registered agent
P.O. Box 312
Emigrant, Mt. 59027

And the Originals were hand delivered on 10 day of November, 2011 to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

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