

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
Brett C. Jensen*
Davina Attar
Catrina V. Clausen

Of Counsel

Robert L. Sterup

Retired

Rockwood Brown
John Walker Ross
Margy Bonner

Michael P. Heringer
mheringer@brownfirm.com

Seth M. Cunningham
scunningham@brownfirm.com

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Board of Directors,
Glastonbury Landowners Association, Inc.
Via Email to info@glamontana.org

RE: Glastonbury Landowners Association Road Policy

To the GLA Board of Directors:

This letter is in response to your request for an opinion letter regarding your Road Policy and the responsibilities of the Glastonbury Landowners Association, Inc. (GLA) and its Board of Directors (Board) in maintaining the roads. You also asked for a letter that you can share with your members in answer to questions that have come up. As such, this letter contains no privileged information regarding ongoing litigation or other privileged matters and should be considered an opinion only on the scope of the issue presented.

I have reviewed the 2008 Road Policy and the GLA's governing documents (Covenants, By-Laws, and Articles of Incorporation). The By-Laws simply state that the purpose of the GLA is "To provide for the management, administration, maintenance, preservation and control of the parcels, roads, and common properties...." (By-Laws Art. II.B.). This provision is a broad purpose statement subject to the Board's binding interpretation. (By-Laws Art. XII.A.). The GLA accomplishes this purpose through its actions by the members and the Board's discretionary powers contained within the By-Laws and the Montana Non-Profit Corporation Act.

The Covenants give more detailed guidance on the roads. In regard to the roads, the Covenants state:

The Association intends to maintain a private road system within the platted road easements for vehicular access to the various parcels within the Community. Initial construction by the developer(s) was intended to be a basic gravel and dirt consistency. The Association may designate and define different qualities or levels of road construction and maintenance within the Community (such as residential roads, foothill roads, mountain roads, etc.) according to its limited ability to deal with such conditions as topography, terrain, elevation, native soil and materials, slope, grade, easement location, parcel location, drainage, climate, weather, snow, ice and mud, and limited resources and equipment. The quality, quantity and/or level of road construction and maintenance may be upgraded by the Association at any time. (Covenants § 8.01(c)).

The Association's road maintenance responsibility is limited by and conditioned upon the Landowners' individual and collective payment of, and the aggregate (total) amount of, the "annual community assessment" as provided in Section 11, together with its ability to increase the assessment to keep up with inflation or increased costs. The Association is not obligated to provide maintenance or snowplowing in excess of the amount that has been paid by Landowners through the annual assessment. (Covenants § 8.01(h)).

The Covenants make it clear that the GLA intends to maintain the roads, but they leave the details of how that is done up to the GLA—as such the By-Laws and Covenants create broad discretionary powers. It is the Board which must make the decisions on how to implement the powers granted by the By-Laws and Covenants. The one major limitation is the amount of assessments collected—if you do not have the money you cannot do the work. The By-Laws and Covenants are the controlling documents, and the Road Policy is the implementation document which uses the discretionary powers given by the By-Laws and Covenants to create a road maintenance plan for the community.

The Road Policy derives its authority from the By-Laws and Covenants and must not conflict with either. The Road Policy can be changed as circumstances in the community dictate. It can be changed by the Board and not a member vote because it is an implementation of the powers granted to the Board. However, obtaining member input and keeping the members informed of any proposed changes is a good practice. As long as the Road Policy does not conflict with the By-Laws or Covenants, the Board can make changes based on the needs of the community.

The GLA has the discretion to determine spending on road maintenance based on resources, weather, location, etc. The Covenants make it clear the GLA has the power to designate levels or qualities of maintenance. However, there is probably some basic level of maintenance the GLA is obligated to provide. The Covenants encompass all the platted roads. While the Covenants give the GLA discretion on how to maintain the roads, that discretion must be exercised fairly and reasonably. There is also the statement that the developers intended roads to be "a basic gravel and dirt consistency."

So I do not think the GLA could decide to abandon a road completely without changing the Covenants or the plats. As long as a road is encompassed by the Covenants or the plats, some consideration has to be given to maintaining that road. All members have the right to use all the roads. Montana case law is clear that with the right to use an easement also comes the obligation to maintain it. The GLA has the ability to decide the level of maintenance, and it should be done as fairly and reasonably as possible.

While there is likely some basic level of maintenance ("basic gravel and dirt consistency"), the GLA clearly has the authority to "designate and define different qualities or levels of road construction and maintenance." Clearly, this language does not mean all roads get the same level of maintenance. The level of detail as to the maintenance given any tier of road is at the

discretion of the GLA. You are not required to set specific standards such as the amount of grading each year, new gravel laid, etc. While the Road Policy sets expectations for the members, there is always the chance that the policy may be deviated from in certain circumstances. Extraordinary weather events may dictate the need to spend money in a manner unplanned for. The GLA has the flexibility to adapt to the circumstances.

The By-Laws and Covenants do not put limits on what level and quantity of maintenance can be done on any road. The Road Policy can establish standards and expectations, but it is subject to change and subordinate to the By-Laws and Covenants.

I will abstain from offering my opinion on whether the Road Policy should be changed or what level of maintenance should be given to particular roads or how it should be funded. I will only offer the opinion that the GLA has the power to create a Road Policy designating the level and quality of maintenance given to particular roads, and it has the power to assess members-at-large or specially to fund maintenance. The hard work of addressing all the competing interests and trying to be reasonable and fair is better left to the Board.

Sincerely,

Seth M. Cunningham

SMC:saw