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

11 KATHLEEN RAKELA and other members of  
12 the Glastonbury Landowners Association,

13 Plaintiffs,

14 vs.

15 GLASTONBURY LANDOWNERS  
16 ASSOCIATION, INC. (GLA), DENNIS RILEY,  
17 DANIEL KEHOE, MARK SEAVER,  
18 RICHARD JOHNSON, CHARLENE MURPHY,  
19 KEVIN NEWBY, LEO KEELER and Other  
20 Does,

21 Defendants,

Cause No. DV 17-150

Judge Brenda R. Gilbert

**ANSWER, AFFIRMATIVE DEFENSES AND  
JURY DEMAND OF DEFENDANTS**

22 COME NOW Defendants Glastonbury Landowners Association, Inc., Dennis Riley, Daniel  
23 Kehoe, Mark Seaver, Richard Johnson, Charlene Murphy, Kevin Newby, and Leo Keeler (hereinafter  
24 “Defendants”) and answer Plaintiff Kathleen Rakela’s Complaint as follows:

25 **RESPONSE TO “PARTIES”**

26 1. As to Paragraph 1 under the heading “Parties” of Plaintiff’s Complaint, Defendants admit  
27 only that upon information and belief, Plaintiff Kathleen Rakela resides in Park County, Montana.  
28 Defendants deny that there are any other Plaintiffs in this case and assert that Plaintiff Rakela has standing  
to assert claims on behalf of the members of Glastonbury Landowners Association, Inc. Plaintiff shall  
hereinafter refer only to Plaintiff Kathleen Rakela, pro se.

1           2.       Defendants admit the allegations in Paragraph 2 under the heading "Parties" of Plaintiff's  
2 Complaint with the following clarification. The proper name is Glastonbury Landowners Association,  
3 Inc. Plaintiff improperly named the "Board of Directors for Glastonbury Landowners Association, Inc."  
4 in the heading of her Complaint. There is no such entity, and she cannot name the individual directors  
5 with that generic heading. Additionally, the Summons she caused to be issued is for the Glastonbury  
6 Landowners Association, Inc. The undersigned attorney represents the Glastonbury Landowners  
7 Association, Inc. (hereinafter "GLA") and not the "Board of Directors for Glastonbury Landowners  
8 Association, Inc."  
9

10                           **RESPONSE TO "FACTS COMMON TO ALL COUNTS"**

11           1.       Defendants admit the allegations in Paragraph 1 under the heading "Facts Common to All  
12 Counts" and asserts that assessments were paid for these parcels in full because they had not yet been  
13 subdivided.  
14

15           2.       Upon information and belief, Defendants admit the allegations in Paragraph 2 under the  
16 heading "Facts Common to All Counts."  
17

18           3.       Defendants admit the allegations in Paragraph 3 under the heading "Facts Common to All  
19 Counts."  
20

21           4.       Defendants admit the allegations in Paragraph 4 under the heading "Facts Common to All  
22 Counts."  
23

24           5.       Defendants admit the allegations in Paragraph 5 under the heading "Facts Common to All  
25 Counts."  
26

27           6.       Defendants admit the allegations in Paragraph 6 under the heading "Facts Common to All  
28 Counts."  
29

1           7.     Defendants admit the allegations in Paragraph 7 under the heading "Facts Common to All  
2 Counts."

3           8.     Defendants deny the allegations in Paragraph 8 under the heading "Facts Common to All  
4 Counts."

5           9.     Defendants deny the allegations in Paragraph 9 under the heading "Facts Common to All  
6 Counts" as they mischaracterize the situation. Defendants assert that the annual election was held on  
7 11/12/2016. Plaintiff mailed her ballot and her remaining assessment to the GLA. For whatever reason,  
8 the check was not seen until the day of the election. Nobody knows who handled the check or how it  
9 ended up in the treasurer's box. However, up until that point, the GLA reasonably believed 3 of her 5 lots  
10 were not yet paid. This resulted in 3 of her 5 votes not being counted. The check was discovered by Rudy  
11 Parker after her ballot was processed. The check was discussed, and the election administrators decided  
12 not to count Plaintiff's 3 votes. The GLA Election Committee held a meeting on November 16, 2016 and  
13 discussed the issue and sought advice of counsel who advised a recount. The GLA Board voted to hold a  
14 recount which occurred on November 26, 2016 and all 5 of Plaintiff's votes were counted.  
15  
16

17           10.    Defendants admit the allegations in the first sentence in Paragraph 10 under the heading  
18 "Facts Common to All Counts." Defendants deny the remaining allegations in this Paragraph.  
19

20           11.    As to the allegations in Paragraph 11 under the heading "Facts Common to All Counts,"  
21 Defendants admit only that Plaintiff emailed the GLA on November 17, 2016 and deny all other  
22 allegations.  
23

24           12.    As to the allegations in Paragraph 12 under the heading "Facts Common to All Counts,"  
25 Defendants admit that a recount took place on November 26, 2016, all 5 of Plaintiff's votes were counted  
26 and the recount changed the election results. Defendants deny Plaintiff's allegations that all landowners  
27 were able to view Plaintiff's ballot and assert ballot secrecy was maintained.  
28

1           13. Defendants admit the allegations in Paragraph 13 under the heading "Facts Common to  
2 All Counts."

3           14. As to the allegations in Paragraph 14 under the heading "Facts Common to All Counts,"  
4 Defendants admit only that Plaintiff sent in a nomination form nominating herself for a South Glastonbury  
5 board position and deny the remaining allegations. Defendants assert that she stated she was a member in  
6 good standing which was subsequently found to be untrue.  
7

8           15. Defendants lack knowledge or information sufficient to form a belief about the allegations  
9 in Paragraph 15 under the heading "Facts Common to All Counts," and therefore deny them. Defendants  
10 assert that Plaintiff requested another envelope claiming she never received one, and another envelope  
11 was provided.  
12

13           16. Defendants deny the allegations in Paragraph 16 under the heading "Facts Common to All  
14 Counts."

15           17. Defendants deny the allegations in Paragraph 17 under the heading "Facts Common to All  
16 Counts."

17           18. Defendants deny the allegations in Paragraph 18 under the heading "Facts Common to All  
18 Counts."  
19

20           19. Defendants deny the allegations in Paragraph 19 under the heading "Facts Common to All  
21 Counts."  
22

23           20. Defendants admit the allegations in Paragraph 16 under the heading "Facts Common to  
24 All Counts" and assert no membership vote was needed to enforce existing Covenants.

25           21. Defendants deny the allegations in Paragraph 21 under the heading "Facts Common to All  
26 Counts."  
27  
28

1           22. Defendants deny the allegations in Paragraph 22 under the heading "Facts Common to All  
2 Counts."

3           23. Defendants admit the allegations in Paragraph 23 under the heading "Facts Common to  
4 All Counts."

5           24. Defendants deny the allegations in Paragraph 24 under the heading "Facts Common to All  
6 Counts."

7           25. Defendants admit the allegations in Paragraph 25 under the heading "Facts Common to  
8 All Counts."

9           26. Defendants admit the allegations in Paragraph 26 under the heading "Facts Common to  
10 All Counts."

11           27. Defendants deny the allegations in Paragraph 27 under the heading "Facts Common to All  
12 Counts." Defendants assert a preliminary approval was provided in 2008 for a family conveyance which  
13 was necessary for Park County to allow the subdivision process. The GLA was never notified that the  
14 process had been completed until it discovered the subdivision independently.  
15

16           28. Defendants deny the allegations in Paragraph 28 under the heading "Facts Common to All  
17 Counts" and assert that Plaintiff sent an email on October 2, 2017 after the GLA had independently  
18 discovered the subdivision and asked her about it.  
19

20           29. Defendants deny the allegations in Paragraph 29 under the heading "Facts Common to All  
21 Counts." Defendants assert that the correct address is published in numerous locations and the old address  
22 is on one form which any reasonable person would know is incorrect. Plaintiff knows the correct address  
23 to send notice of subdivisions as she did for the subdivision on her SG 51 lot in 2016. She also has paid  
24 assessments to the correct address. Finally, Plaintiff did not mail notice until after the GLA had  
25 independently discovered the subdivision and asked her about it.  
26  
27  
28

1           30.     As to the allegations in Paragraph 30 under the heading "Facts Common to All Counts,"  
2 Defendants admit only the GLA board passed a motion to disqualify Plaintiff as a nominated candidate  
3 for the 2017 election due to her failure to notify the GLA of the 2016 transfer of property pursuant to  
4 Covenant 10.04. Defendants deny the remaining allegations.

5           31.     Defendants deny the allegations in Paragraph 31 under the heading "Facts Common to All  
6 Counts."

7           32.     Defendants deny the allegations in Paragraph 32 under the heading "Facts Common to All  
8 Counts."

9           33.     Defendants deny the allegations in Paragraph 33 under the heading "Facts Common to All  
10 Counts."

11           34.     As to the allegations in Paragraph 34 under the heading "Facts Common to All Counts,"  
12 Defendants admit only Plaintiff sent an email to the GLA on 10/10/17 and deny the remaining allegations.

13           35.     Defendants deny the allegations in Paragraph 35 under the heading "Facts Common to All  
14 Counts."

15           36.     Defendants deny the allegations in Paragraph 36 under the heading "Facts Common to All  
16 Counts."

17           37.     Defendants deny the allegations in Paragraph 37 under the heading "Facts Common to All  
18 Counts."

19           38.     Defendants deny the allegations in Paragraph 38 under the heading "Facts Common to All  
20 Counts."

21           39.     Defendants deny the allegations in Paragraph 39 under the heading "Facts Common to All  
22 Counts."

1           40.    As to the allegations in Paragraph 40 under the heading "Facts Common to All Counts,"  
2 Defendants admit there were negotiations and offers and counter-offers of compromise that are not  
3 admissible as evidence and deny the rest of the allegations.

4           41.    Defendants deny the allegations in Paragraph 41 under the heading "Facts Common to All  
5 Counts."

6           42.    As to the allegations in Paragraph 42 under the heading "Facts Common to All Counts,"  
7 Defendants admit there were negotiations and offers and counter-offers of compromise that are not  
8 admissible as evidence and deny the rest of the allegations.

9           43.    Defendants deny the allegations in Paragraph 43 under the heading "Facts Common to All  
10 Counts."  
11

12           44.    Defendants deny the allegations in Paragraph 44 under the heading "Facts Common to All  
13 Counts" and assert that at the time of his nomination, Marshall Haley was in good standing, but  
14 subsequently lost that status due to failure to pay his assessments timely.

15           45.    Defendants deny the allegations in Paragraph 45 under the heading "Facts Common to All  
16 Counts."  
17

18           46.    Defendants deny the allegations in Paragraph 46 under the heading "Facts Common to All  
19 Counts."  
20

21           **RESPONSE TO "JURISDICTION AND VENUE"**

22           1.    Defendants deny Paragraph 1 under the heading "Jurisdiction and Venue" of Plaintiff's  
23 Complaint. Plaintiff has failed to join the necessary parties without which the Court cannot issue a  
24 judgment affecting them nor is it clear what contract or other writing Plaintiff is seeking a judgment  
25 regarding.  
26  
27  
28

1           2.       Defendants deny Paragraph 2 under the heading “Jurisdiction and Venue” of Plaintiff’s  
2 Complaint as that statute applies to state and political subdivisions.

3                   **RESPONSE TO “GENERAL ALLEGATIONS”**

4           1.       Defendants deny Paragraphs 1-9 under the heading “General Allegations” of Plaintiff’s  
5 Complaint.

6                   **RESPONSES TO COUNT 1 THROUGH COUNT 6**

7           1.       In response to Paragraphs 1, 5, 9, 13, 16, and 20 under the headings Count 1 through Count  
8 6 of Plaintiff’s Complaint, Defendants re-assert their answers to all Paragraphs of the Complaint.

9           2.       Defendants deny Paragraphs 2-4, 5-8, 10-12, 14-15, and 17-19, and 22 under the headings  
10 Count 1 through Count 6.

11           3.       Defendants lack knowledge or information sufficient to form a belief about the allegations  
12 in the first sentence in Paragraph 21 under the heading “Count 6” and therefore deny them. Defendants  
13 deny the remaining allegations in Paragraph 21 under the heading “Count 6.”

14                                   **FIRST AFFIRMATIVE DEFENSE**

15           Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

16                                   **SECOND AFFIRMATIVE DEFENSE**

17           Plaintiff lacks standing to assert claims on behalf of the other members of the GLA and on behalf  
18 of Marshall Haley in regard to a Declaratory Judgment and any other claims.

19                                   **THIRD AFFIRMATIVE DEFENSE**

20           Plaintiff failed to join necessary parties for a Declaratory Judgment Action.

21                                   **FOURTH AFFIRMATIVE DEFENSE**

22           Plaintiff’s sought relief is not encompassed by the Declaratory Judgment Act.

23                                   **FIFTH AFFIRMATIVE DEFENSE**

24           Plaintiff’s asserted claims under the Montana and Federal Constitution fail as a matter of law  
25 because the GLA is not a State actor.



1 **SIXTH AFFIRMATIVE DEFENSE**

2 Plaintiff's asserted claims regarding disenfranchisement fail as a matter of law because the GLA  
3 is not a State actor.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 The actions complained of were ministerial actions and are not subject to challenge.

6 **EIGHTH AFFIRMATIVE DEFENSE**

7 Any error on the part of the Defendants was harmless error.

8 **NINTH AFFIRMATIVE DEFENSE**

9 The alleged conflict of interest does not fall within Mont. Code Ann. § 35-2-418.

10 **TENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's claims barred by the doctrine of unclean hands.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 Plaintiff may be a proxy for Valery O'Connell in violation of the Court's Order dated May 8, 2017  
14 declaring Valery O'Connell a vexatious litigant. Additionally, Ms. O'Connell may be engaging in the  
15 unauthorized practice of law.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims are barred by the doctrines of laches, equitable estoppel and acquiescence.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiff is not entitled to any damages which may have been sustained by Plaintiff to the extent  
20 they were increased and/or aggravated by Plaintiff's failure to mitigate her own damages.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 Some of Plaintiff's claims may be barred by applicable statutes of limitations.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 Plaintiff's case fails to meet the requirements for issuance of a temporary restraining order.

25 **SIXTEENTH AFFIRMATIVE DEFENSE**

26 In regard to allowing members to pay assessments at the door at annual meetings, this variance  
27 from the Covenants was on the advice of counsel.

28

1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 The notice re payment of assessments was not a rule change requiring notice because the  
3 Covenants require payment by October 31 of each year. Nevertheless, notice was sent to the members on  
4 at least 5 different occasions.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 The actions complained of were discretionary actions and are not subject to challenge.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's allegations regarding the 2016 election are irrelevant to the issues raised regarding the  
9 2017 election. Further, that issue was resolved and is moot.

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 The GLA is entitled to its attorney fees and costs for the defense of this action.

12 **RESERVATION**


13 Defendants hereby reserve the right to amend their Answer to include further affirmative defenses  
14 such as are revealed in discovery or otherwise.

15 **WHEREFORE** Defendants request judgment as follows:

- 16 1. That Plaintiff takes nothing by way of her Complaint and the same be dismissed with  
17 prejudice;
- 18 2. For Defendants' costs and attorney fees in defending this matter;
- 19 3. For such further and other relief as the Court deems equitable and just.

20 DATED this 22nd day of December, 2017.

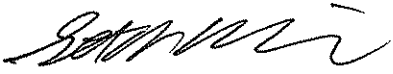
21 BROWN LAW FIRM, P.C.

22 BY   
23  
24 Seth M. Cunningham  
25 Attorneys for Defendants  
26  
27  
28

**CERTIFICATE OF SERVICE**

This does certify that a true and correct copy of the foregoing was duly served on Plaintiff by U.S. mail, postage prepaid, and addressed as follows, this 22nd day of December, 2017:

Kathleen Rakela  
109 S B St.  
Livingston, MT 59047  
*Plaintiff Pro Se*

By:   
Seth M. Cunningham

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