

1 Seth M. Cunningham
2 BROWN LAW FIRM, P.C.
3 315 North 24th Street
4 P.O. Drawer 849
5 Billings, MT 59103-0849
6 Tel (406) 248-2611
7 Fax (406) 248-3128
8 scunningham@brownfirm.com

9 *Attorney for Defendants*

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

11 KATHLEEN RAKELA, CLARE PARKER,
12 RUDY PARKER, EDWARD DOBROWSKI,

13 Plaintiffs,

14 vs.

15 GLASTONBURY LANDOWNERS
16 ASSOCIATION, INC., GLASTONBURY
17 LANDOWNERS ASSOCIATION, INC.'S
18 BOARD OF DIRECTORS, DENNIS RILEY,
19 DANIEL KEHOE, MARK SEAVER,
20 RICHARD JOHNSON, CHARLENE MURPHY,
21 KEVIN NEWBY, LEO KEELER, individually,
22 and as Board Members,

23 Defendants,

Cause No. DV 17-150

Judge Brenda R. Gilbert

**ANSWER TO PLAINTIFFS' AMENDED
COMPLAINT, AFFIRMATIVE DEFENSES
AND JURY DEMAND OF DEFENDANTS**

24 COME NOW Defendants Glastonbury Landowners Association, Inc., Dennis Riley, Daniel
25 Kehoe, Mark Seaver, Richard Johnson, Charlene Murphy, Kevin Newby, and Leo Keeler (hereinafter
26 "Defendants") and answer Plaintiffs' Kathleen Rakela, Clare Parker, Rudy Parker, and Edward
27 Dobrowski Amended Complaint as follows:

ANSWER TO "PARTIES"

28 1. As to Paragraph 1 under the heading "Parties" of Plaintiffs' Amended Complaint,
Defendants admit upon information and belief, Plaintiff Kathleen Rakela resides in Park County,
Montana.

1 2. Defendants admit the allegations in Paragraph 2 under the heading "Parties" of Plaintiffs'
2 Amended Complaint with the following clarification. The proper entity is Glastonbury Landowners
3 Association, Inc. Plaintiffs improperly named the "Board of Directors for Glastonbury Landowners
4 Association, Inc." in the heading of their Amended Complaint. There is no such entity, and they cannot
5 name the individual directors with that generic heading. Additionally, the Summons they caused to be
6 issued is for the Glastonbury Landowners Association, Inc. and not the "Board of Directors for
7 Glastonbury Landowners Association, Inc." Further, because there is no such entity as the "Board of
8 Directors for Glastonbury Landowners Association, Inc.," it cannot be served or made a party to this case.
9 The undersigned attorney represents the Glastonbury Landowners Association, Inc. (hereinafter "GLA")
10 and the individually named Defendants and not the "Board of Directors for Glastonbury Landowners
11 Association, Inc."
12
13

14 **ANSWER TO "FACTS COMMON TO ALL COUNTS"**

15 1. Defendants admit the allegations in Paragraph 1 under the heading "Facts Common to All
16 Counts" and asserts that assessments were paid for these parcels in full because they had not yet been
17 subdivided.
18

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

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

24 4. Defendants admit the allegations in Paragraph 4 under the heading "Facts Common to All
25 Counts."
26

27 5. Defendants admit the allegations in Paragraph 5 under the heading "Facts Common to All
28 Counts" and assert that Plaintiff Rudy Parker was the person in charge of applying assessments.

1 6. Defendants admit the allegations in Paragraph 6 under the heading “Facts Common to All
2 Counts.”

3 7. Defendants admit the allegations in Paragraph 7 under the heading “Facts Common to All
4 Counts.”

5 8. Defendants deny the allegations in Paragraph 8 under the heading “Facts Common to All
6 Counts.”

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

19
20
21 10. Defendants admit the allegations in the first sentence in Paragraph 10 under the heading
22 “Facts Common to All Counts.” Defendants deny the remaining allegations in this Paragraph.

23
24 11. As to the allegations in Paragraph 11 under the heading “Facts Common to All Counts,”
25 Defendants admit only that Plaintiff Rakela emailed the GLA on November 17, 2016 and deny all other
26 allegations.

1 12. As to the allegations in Paragraph 12 under the heading “Facts Common to All Counts,”
2 Defendants admit that a recount took place on November 26, 2016, all 5 of Plaintiff Rakela’s votes were
3 counted, and the recount changed the election results. Defendants deny Plaintiff Rakela’s allegations that
4 all landowners were able to view Plaintiff Rakela’s ballot and assert ballot secrecy was maintained.

5 13. Defendants admit the allegations in Paragraph 13 under the heading “Facts Common to
6 All Counts.”

7 14. As to the allegations in Paragraph 14 under the heading “Facts Common to All Counts,”
8 Defendants admit only that Plaintiff Rakela sent in a nomination form nominating herself for a South
9 Glastonbury board position and deny the remaining allegations. Defendants assert that she represented
10 that she was a member in good standing which was subsequently found to be untrue.

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

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

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

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

21 19. Defendants deny the allegations in Paragraph 19 under the heading “Facts Common to All
22 Counts” as the quoted language leaves out the full text of Article VI.B.10 of the GLA Bylaws.
23
24
25
26
27
28

1 20. Defendants deny the allegations in Paragraph 20 under the heading “Facts Common to All
2 Counts.”

3 21. Defendants admit the allegations in Paragraph 21 under the heading “Facts Common to
4 All Counts” and assert no membership vote was needed to enforce existing Covenants.

5 22. Defendants deny the allegations in Paragraph 22 under the heading “Facts Common to All
6 Counts.”

7 23. Defendants deny the allegations in Paragraph 23 under the heading “Facts Common to All
8 Counts.”

9 24. Defendants admit the allegations in Paragraph 24 under the heading “Facts Common to
10 All Counts.”

11 25. Defendants admit the allegations in Paragraph 25 under the heading “Facts Common to
12 All Counts.”

13 26. Defendants admit the allegations in Paragraph 26 under the heading “Facts Common to
14 All Counts.”

15 27. Defendants deny the allegations in Paragraph 27 under the heading “Facts Common to All
16 Counts.” Defendants assert a preliminary approval was provided in 2008 for a family conveyance which
17 was necessary for Park County to allow the subdivision process. The GLA was never notified that the
18 process had been completed in September of 2016 until it discovered the subdivision independently in
19 September of 2017. No assessments had been paid on the new parcel.
20
21
22

23 28. Defendants deny the allegations in Paragraph 28 under the heading “Facts Common to All
24 Counts” and assert that Plaintiff Rakela sent an email on October 2, 2017 after the GLA had independently
25 discovered the subdivision and asked her about it. It is further asserted Plaintiff Rakela did not mail a
26 notice until she had been asked about the division, and that she then mailed the notice to the wrong
27
28

1 address. Plaintiff represented to the GLA that the new parcel had been conveyed to her son, Parsifal
2 Pittendorf, and asked that all past due assessments be billed to him.

3 29. Defendants deny the allegations in Paragraph 29 under the heading "Facts Common to All
4 Counts." Defendants assert that the correct address is published in numerous locations and the old address
5 is on one form which any reasonable person would know is incorrect. Plaintiff Rakela knew the correct
6 address to send notice of the subdivision as she successfully sent notice for the subdivision on her SG 51
7 Lot in 2016. She also has paid assessments to the correct address. Finally, Plaintiff Rakela did not mail
8 notice until after the GLA had independently discovered the subdivision and asked her about it.

9
10 30. As to the allegations in Paragraph 30 under the heading "Facts Common to All Counts,"
11 Defendants admit only the GLA board passed a motion to disqualify Plaintiff as a nominated candidate
12 for the 2017 election due to her failure to notify the GLA of the 2016 transfer of property pursuant to
13 Covenant 10.04. Defendants deny the remaining allegations.

14
15 31. Defendants deny the allegations in Paragraph 31 under the heading "Facts Common to All
16 Counts." Defendants further assert that Plaintiff Rakela represented to the GLA on numerous occasions
17 that she transferred the new parcel to her son orally and in writing. She asked that the unpaid assessments
18 be billed to him. The GLA relied on her representations in making its decisions. It was only upon her
19 inability to produce evidence of the transfer that she now asserts she was not in violation of the Covenants
20 because she did not transfer the parcel. Plaintiff should be estopped from making such an argument, and
21 to the extent she is not, she was still in violation of the Covenants during the nomination period because
22 assessments were not paid on the parcel. Further, a division of land creating a new parcel still constitutes
23 a transfer of property and receiving whether or not Plaintiff Rakela became the new owner or her son
24 became the new owner.
25
26
27
28

1 32. Defendants deny the allegations in Paragraph 32 under the heading “Facts Common to All
2 Counts.”

3 33. Defendants deny the allegations in Paragraph 33 under the heading “Facts Common to All
4 Counts.”

5 34. Defendants deny the allegations in Paragraph 34 under the heading “Facts Common to All
6 Counts.”

7 35. Defendants deny the allegations in Paragraph 35 under the heading “Facts Common to All
8 Counts.”

9 36. Defendants deny the allegations in Paragraph 36 under the heading “Facts Common to All
10 Counts.”

11 37. Defendants deny the allegations in Paragraph 37 under the heading “Facts Common to All
12 Counts.”

13 38. As to the allegations in Paragraph 38 under the heading “Facts Common to All Counts,”
14 Defendants admit only that Plaintiff sent an email to the GLA on October 10, 2017 and deny the remaining
15 allegations.
16

17 39. Defendants deny the allegations in Paragraph 39 under the heading “Facts Common to All
18 Counts.”

19 40. Defendants deny the allegations in Paragraph 40 under the heading “Facts Common to All
20 Counts.”

21 41. Defendants deny the allegations in Paragraph 41 under the heading “Facts Common to All
22 Counts.”

23 42. Defendants deny the allegations in Paragraph 42 under the heading “Facts Common to All
24 Counts.”
25
26
27
28

1 43. Defendants deny the allegations in Paragraph 43 under the heading “Facts Common to All
2 Counts.”

3 44. As to the allegations in Paragraph 44 under the heading “Facts Common to All Counts,”
4 Defendants admit there were negotiations and offers and counter-offers of compromise that are not
5 admissible as evidence and deny the rest of the allegations.

6 45. In regard to the allegations in Paragraph 45 under the heading “Facts Common to All
7 Counts,” Defendants deny that Mark Seaver sent a “threatening and intimidating” email to Plaintiff
8 Rakela and admit only that Mark Seaver sent her an email in response to receiving email from her on his
9 personal email account instead of his GLA board member account.

10 46. As to the allegations in Paragraph 46 under the heading “Facts Common to All Counts,”
11 Defendants admit there were negotiations and offers and counter-offers of compromise that are not
12 admissible as evidence and deny the rest of the allegations.

13 47. Defendants deny the allegations in Paragraph 47 under the heading “Facts Common to All
14 Counts.”

15 48. Defendants deny the allegations in Paragraph 48 under the heading “Facts Common to All
16 Counts.”

17
18
19
20 **ANSWER TO “GENERAL ALLEGATIONS”**

21 1. Defendants deny Paragraphs 1-10 under the heading “General Allegations” of Plaintiff’s
22 Amended Complaint.

23
24 **ANSWER TO COUNT 1 BREACH OF FIDUCIARY DUTY**

25 1. In response to Paragraph 1 under the heading “Count 1 Breach of Fiduciary Duty,”
26 Defendants re-assert their answers to all Paragraphs of the Amended Complaint.

27 2. Defendants deny Paragraphs 2-5, under the heading “Count 1 Breach of Fiduciary Duty.”
28

1
2
3 **ANSWER TO COUNT 2 BREACH OF FIDUCIARY DUTY**

4 1. In response to Paragraph 1 under the heading “Count 2 Breach of Fiduciary Duty,”
5 Defendants re-assert their answers to all Paragraphs of the Amended Complaint.
6

7 2. Defendants deny Paragraphs 2-4, under the heading “Count 1 Breach of Fiduciary Duty.”

8 **ANSWER TO COUNT 3 DECLARATORY JUDGMENT**

9 1. In response to Paragraph 1 under the heading “Count 3 Declaratory Judgment,” Defendants
10 re-assert their answers to all Paragraphs of the Amended Complaint.
11

12 2. Defendants deny Paragraphs 2-4, under the heading “Count 2 Declaratory Judgment.”

13 **ANSWER TO COUNT 4 BREACH OF CONTRACT**

14 1. In response to Paragraph 1 under the heading “Count 4 Breach of Contract,” Defendants
15 re-assert their answers to all Paragraphs of the Amended Complaint.
16

17 2. Defendants deny Paragraphs 2-3, under the heading “Count 4 Breach of Contract.”

18 **ANSWER TO COUNT 5 BREACH OF COVENANTS/BYLAWS**

19 1. In response to Paragraph 1 under the heading “Count 5 Breach of Covenants/Bylaws,”
20 Defendants re-assert their answers to all Paragraphs of the Amended Complaint.
21

22 2. Defendants deny Paragraphs 2-9, under the heading “Count 5 Breach of
23 Covenants/Bylaws.”

24 **ANSWER TO COUNT 6 NEGLIGENCE**

25 1. In response to Paragraph 1 under the heading “Count 6 Negligence,” Defendants re-assert
26 their answers to all Paragraphs of the Amended Complaint.
27

28 2. Defendants deny Paragraphs 2-4, under the heading “Count 6 Negligence.”

1 **FIRST AFFIRMATIVE DEFENSE**

2 Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted.

3 **SECOND AFFIRMATIVE DEFENSE**

4 Plaintiffs lacks standing to assert claims on behalf of the other members of the GLA in regard to
5 a Declaratory Judgment and any other claims.

6 **THIRD AFFIRMATIVE DEFENSE**

7 Plaintiffs failed to join necessary parties for a Declaratory Judgment Action.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' sought relief is not encompassed by the Declaratory Judgment Act.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' asserted claims under the Montana and Federal Constitution fail as a matter of law
12 because the GLA is not a State actor.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Plaintiffs' asserted claims regarding disenfranchisement fail as a matter of law because the GLA
15 is not a State actor.

16 **SEVENTH AFFIRMATIVE DEFENSE**

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

18 **EIGHTH AFFIRMATIVE DEFENSE**

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

20 **NINTH AFFIRMATIVE DEFENSE**

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

22 **TENTH AFFIRMATIVE DEFENSE**

23 Plaintiffs' claims are barred by the doctrine of unclean hands.

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 Plaintiffs' claims for negligence may be reduced or barred by Mont. Code Ann. § 27-1-702.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 Plaintiffs' claims are barred by the doctrines of laches, estoppel, waiver and acquiescence.
28

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs are not entitled to any damages which may have been sustained by Plaintiffs to the
3 extent they were increased and/or aggravated by Plaintiffs' failure to mitigate their own damages.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Some of Plaintiffs' claims may be barred by applicable statutes of limitations.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 Any negligence should be apportioned among all parties pursuant to Mont. Code Ann. § 27-1-
8 703.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs' allegations regarding the 2016 election are irrelevant to the issues raised regarding the
20 2017 election. Further, that issue was resolved and is moot.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

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

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 The GLA, through its Board of Directors, justifiably relied on Plaintiff Rakela's material
25 representations regarding the division and transfer of her property.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 There is no such entity as the "Glastonbury Landowners Association, Inc. Board of Directors"
28 named in the heading.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 At all times the individually named board members were acting within the course and scope of
3 their agency for the GLA, and they cannot be held individually liable.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 There is no fiduciary duty imposed on the GLA board of duties as alleged by Plaintiffs.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 Plaintiffs' claims of breach of contract fail for lack of consideration.

8 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' claims of breach of contract are barred by the statute of frauds.

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' claims regarding the 2016 and 2017 annual elections are moot.

12 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claims are barred as a matter of public policy.

14 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15 The GLA Board's interpretations of the Bylaws and Covenants are reasonable and binding.

16 **THIRTIETH AFFIRMATIVE DEFENSE**

17 All actions by the GLA and its Board members were within the powers and duties granted to
18 them under Montana law, the Articles of Incorporation, the Bylaws and the Covenants.

19 **RESERVATION**

20 Defendants hereby reserve the right to amend their Answer to the Amended Complaint to include
21 further affirmative defenses such as are revealed in discovery or otherwise.

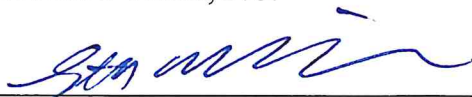
22 **WHEREFORE** Defendants request judgment as follows:

- 23 1. That Plaintiffs take nothing by way of their Amended Complaint and the same be
24 dismissed with prejudice;
- 25 2. For Defendants' costs and attorney fees in defending this matter;
- 26 3. For such further and other relief as the Court deems equitable and just.

1 DATED this 30th day of April, 2018.

2 BROWN LAW FIRM, P.C.

3
4 BY



Seth M. Cunningham
Attorneys for Defendants

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
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 30th day of April, 2018:

Jami Rebsom
Jami Rebsom Law Firm, P.L.L.C.
P.O. Box 670
Livingston, MT 59047

By: 
Seth M. Cunningham

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28