

GLA Memo

To: Seth Cunningham, Attorney – Brown Law Firm
From: GLA Project Review Committee
Date: June 9, 2020
Subject: GLA Construction Bond Disposition

Construction Bonds are collected from landowners as part of the project application process. These funds are held by the GLA in our savings account to ensure construction completion, and site cleanup and restoration. Currently there are approximately \$20,000 of unclaimed construction bond monies in the GLA's bank account from past projects.

Typically, the GLA waits for landowners to request final project approval and refund of construction bonds. For various reasons, a number of landowners do not complete the process. Between 2014 and 2016, a project to determine whom the money belonged to was undertaken only to show that poor record keeping made it impossible to determine a good portion of the money's ownership. (We do know who is owed money from recent projects.) In fact, some of the people who might have been owed the bond no longer own property in Glastonbury.

In an effort to address this situation and prevent it from occurring in the future, the Project Review Committee (PRC) will maintain records of all projects from inception through completion. We are seeking advice on the best way forward.

Question 1: What process might we use to declare some of these fees (\$20,000) to be forfeited and belonging to the GLA?

Question 2: The Project Review Committee is recommending to the board that the regulation described below be sent to landowners for 30-day review and implemented if there is not substantial landowner opposition. We request your legal opinion on this regulation.

Construction Bond Regulation

The board expects that landowner projects are to be completed within 3 years of the projected start date listed on the project application. At or before that time, the landowner must request a final project approval demonstrating to the Project Review Committee (PRC) that all preliminary approval conditions have been met, such as providing copies of all permits, reseeded, etc. If the PRC approves the completed work, the final approval form will be signed by the PRC representative and delivered to the GLA Administrator, who will request that the Treasurer return the construction bond to the landowner.

If a landowner's project is not finished by the end of 3 years, the landowner may apply for an extension of up to 3 more years, leaving the construction bond in place. If an extension is requested and granted, the project will be reviewed upon completion as stated above. If the project is not completed within the extension period, the landowner forfeits the construction bond to the GLA.

If at the end of 3 years the landowner does not apply for final approval or an extension, the construction bond will be forfeited in total to the GLA.

Funds forfeited to the GLA will be added to the general operating budget to maintain the roads and the community.

----- Forwarded message -----

From: **Seth Cunningham** <SCunningham@brownfirm.com>

Date: Sun, Oct 18, 2020 at 8:16 PM

Subject: RE: request for opinion on construction bonds

To: Newman Brozovsky <newmanla@gmail.com>

Cc: Kelly Anderson <KAnderson@brownfirm.com>, Samantha Schweigert <sschweigert@brownfirm.com>

Hi Newman,

Thank you for your patience on my response. I know it's been awhile as other things have arisen. Here are my answers to the questions:

Question 1: What process might we use to declare some of these fees (\$20,000) to be forfeited and belonging to the GLA?

First, I would look to the written terms of the project approval or bond. If there was a written approval conditioning the approval on the bond or any other writing showing what the terms are, then that would control how the funds are forfeit.

Second, knowledge of a verbal agreement would be allow the GLA to take possession of the funds as well if the terms of the bond weren't fulfilled. I recommend a memorandum about each amount forfeited based on a verbal agreement be completed by whoever can attest to it.

In either of the above cases, I think you should send notice of the intent to forfeit it to the last known address.

The more complicated situation which you have told me about involves bond money the GLA has, knows is owed to a landowner, and the identity of the landowner/project is unknown. Short answer: if the property doesn't clearly belong to the GLA (i.e. forfeited under the terms of the approval), then the State takes it.

If the landowner did complete the project as required, then the landowner is the owner of the funds. This puts the GLA in possession of possible unclaimed property. Montana has the Uniform Unclaimed Property Act which I think controls in the absence of written agreements. That act can be found here: https://leg.mt.gov/bills/mca/title_0700/chapter_0090/part_0080/sections_index.html

For this property, I think it would be presumed abandoned after 5 years pursuant to Mont. Code Ann. 79-803(1)(r). I don't think the GLA can just take the funds once abandoned though. This act requires corporations holding abandoned property to tender it to the State of Montana along with a report of all known information. The State will hold it for a period, and then add it to the State general fund.

I suggest before you go down this path, you publish in your newsletter a reminder to landowners to submit their completion paperwork to reclaim their bonds. Hopefully, some owners will come forward with documentation to claim their funds and you can sort it out without giving it to the State.

Question 2: The Project Review Committee is recommending to the board that the regulation described below be sent to landowners for 30-day review and implemented if there is not substantial landowner opposition. We request your legal opinion on this regulation.

I think the regulation is within the rulemaking authority in the Covenants 2.07. However, I have a couple of suggestions. First, I recommend putting in a notice requirement to the landowner that the bond will be forfeited within X number of days without their showing they have completed the project or applied for an extension.

Second, I recommend putting in something to the effect that the Board will consider hardship exemptions on a case by case basis. If a landowner lost a job or was suddenly disabled, it would be appropriate to make exceptions to forfeiting the bond.

Sincerely,

Seth M. Cunningham
Brown Law Firm, P.C.
315 North 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
Phone (406) 248-2611
Fax (406) 248-3128
email: scunningham@brownfirm.com