

**Governing Documents Committee Minutes**  
**Jan 16, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Morgan Squires, Jewel Wiczorek.

Committee Members Absent: Douglas Gill

Landowners Present: Aija-Mara Accatino, Miriam Barker, Jerry Ladewig

CALL TO ORDER: 7:03 P.M. MST

**Discussion and approval of December 19 meeting minutes—**

The committee discussed and edited the draft minutes of the last meeting. **Claudette motioned and Jewel seconded the motion to approve the revised draft minutes of the December 19 Governing Documents Committee meeting. Leslie recused herself as she was not in attendance at the December 19 meeting. Motion passed with unanimous voice vote among the remaining committee members.**

**Reviewed Resources in Shared Gov Docs Folder on Google Drive—**

Committee discussed link to the Google Drive folder with Gov Docs resources. Members reported problems accessing the folder and files and clarified steps. Committee reviewed the contents of each of five folders within the overall “2023 Gov Docs Resources” folder:

**Considered and Dismissed One Draft Change—**

Discussed Andrea’s draft edits of well logs section (Covenant 5.1.2). Committee rejected the change. Consensus was that the entire requirement on well logs should be deleted.

**Discussed Simplification Principle, Enforcing the Governing Documents’ Requirements—**

Jewel raised the question about the general approach in suggesting revisions. Her perception was that the already complex governing documents could become overly unwieldy. She read a message she received from a landowner that suggested the Board should be a minimalist organization and not get carried away on enforcement. Her own view is that the committee should not put greater controls in place but rather simplify. Morgan agreed that the committee should proceed with caution and that any steps we take should maintain property values but not overstep personal property rights.

Andrea noted that the Board had not been overblown in efforts to enforce the governing documents. She stressed that the Board and Covenants were designed to protect the character of the community. People new to the Board are not aware of some very serious violations that the Board has had to address. Claudette pointed out that the GLA is required by law to follow the Montana Nonprofit Association Act. Not addressing violations opens the door to copy-cat violations, so it is important to maintain the standards. Not everyone is a good neighbor.

Reminding the committee that, in order to actually implement changes this committee suggests in Covenants, Bylaws, Master Plan, or Articles of Incorporation, the Board must follow a multi-step process. That process includes Board approvals, attorney reviews, a 30-day landowner review and comment period on the set of recommended changes, which are then revised accordingly, and finally a full vote of all the members in good standing on each recommended change. Other rules and regulations follow a simpler process.

The Governing Documents Committee Approved These Minutes on January 30, 2023.

**Suggestions for Future Work and Meetings—**

Committee members could present other issues beyond the ‘working goals’ document that they want to pursue. Also, committee members can suggestion additions to the draft agenda topics.

**Action Items:**

1. Before the next meeting, committee members will consider what workplan tasks/aspects they would like to take on and let Andrea know.
2. Committee members will add relevant resource materials in the Google Drive Gov Docs area

**Committee Member Changes—**

The Board voted to add Leslie Everett to the committee during its January 12, 2023 monthly meeting. Sandra Schreyer had resigned from the committee.

**Next Meeting—** January 30, 2023.

**Adjournment—**

**Jewel motioned and Claudette seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:35 P.M. MST

**Governing Documents Committee Minutes**  
**Jan 30, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill, Morgan Squires, Jewel Wieczorek.

Landowners Present: Aija-Mara Accatino, Miriam Barker, Les Seago

CALL TO ORDER: 7:03 P.M. MST

**Discussion and approval of January 16 meeting minutes—**

The committee discussed and edited the draft minutes of the last meeting. **Claudette motioned and Leslie seconded the motion to approve the revised draft minutes of the January 16 Governing Documents Committee meeting. Doug recused himself as he was not in attendance at that meeting. Motion passed with unanimous voice vote among the remaining committee members.**

**Reviewed Resources in Shared Gov Docs Folder on Google Drive—**

Committee noted additions to the Gov Docs resources folder on Google Drive. The election procedures document was removed as it had been incorporated into 2020 amendments in the Restated Bylaws.

Andrea and Claudette reported their work on the Covenants, sections 5 and 6, reviewing the work done by the 2015 Gov Docs committee and editing those sections accordingly.

Jewel, Leslie, and Claudette expressed interest in the conflicts and inconsistencies between the Master Plan and the Covenants.

**Next Steps—**

Committee members would work individually and in smaller teams on different aspects of the Gov Docs work

**Action Items:**

1. Leslie will turn the remaining pdf files in the 'Word Docs for Editing' folder into Word documents.
2. Leslie, Claudette, and Jewel will work on the MP-Covenants discrepancies.
3. Andrea and Claudette will complete the work integrating the 2015 Gov Docs committee recommendations into the Covenants draft.
4. Doug will review the documents to identify which clauses do not describe policies or rules but are instead simply preferences or desires.

**Next Meeting—** February 20, 2023.

**Adjournment—**

**Jewel motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:38 P.M. MST

The Governing Documents Committee Approved These Minutes on February 20, 2023.

**Governing Documents Committee Minutes**  
**February 20, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill, Jewel Wieczorek.

Committee Members Absent: Morgan Squires

Landowners Present: Aija-Mara Accatino, Miriam Barker, Les Seago

CALL TO ORDER: 7:04 P.M. MST

**Review and approve minutes of January 30 meeting—**

After the committee corrected one item in the draft minutes, **Jewel motioned and Claudette seconded the motion to approve the revised minutes of the January 30 Governing Documents Committee meeting. Motion passed with unanimous voice vote.**

**Committee members' reports on work done since the last meeting—**

Jewel, Leslie and Claudette worked on coordinating the Covenants and the Master Plan documents. They met twice for a total of 5 hours since the last full committee meeting. They worked through Claudette's summary document that identified contradictory areas to guide their markup, but were not yet finished with that review.

Doug examined the policies and the Master Plan and flagged a number of the items were suggestions that make for a good neighbor but not rules to be enforced. The committee discussed streamlining the documents by removing these various items that are visions for the community and moving them into a document that compiles these recommendations for how to be a good neighbor, to be disseminated in a welcome package.

**Discussion of specific edits—**

The Master Plan statement of purpose says it is to “enhance property value,” but Claudette pointed out that HOAs commonly say their purpose is to “protect, preserve and enhance” property values; the Committee agreed with this change. The Committee also considered where to locate the paragraph about the Association Board's responsibility and the majority felt it should be an introduction to the Administration section. The group also recommended that the entire Administration section be moved up to become the new 1.0 to set the stage for all that follows. Several other edits were suggested, pertaining to subdivisions and to the need to delete the Covenants; clarify Covenants on multi-family dwelling units, which are not allowed per the Master Plan. Discussion about whether the Covenants and Master Plan should reference each other by citing specific clauses concluded that the lawyer's review should ultimately decide this matter but the working approach would be to allow references to the Covenants in the Master Plan, but not vice versa.

**Discussion of approach for presenting the Committee's changes for Landowners' votes—**

A set of the Committee's proposed changes is to modernize language and without changing the effective rules (e.g., corrected grammatical errors, misspellings, passive voice to active voice, deleted irrelevant phrases, logical reordering, etc.). Other categories of changes do insert requirements that are given in other documents and others actually change certain rules. Such changes aim to reconcile disagreements across the different GLA documents, remove requirements that are already dictated

The Governing Documents Committee Approved These Minutes on March 20, 2023.

by county and/or state laws and enforced by those entities, update specific requirements to be consistent with county and state laws, and apply clearly to present-day practices not specifically mentioned or defined in the earlier text.

**The Board and the Project Review Committee need to reconcile the construction timelines**

The timeline allows one year after approval to begin a project, but the recent Board vote that the GLA will begin charging a dwelling assessment after 18 months seems to provide an unreasonably short construction period. The resolution of this matter may require a Board vote and affect the PR instructions and forms.

**The Committee congratulated Leslie Everett on being elected by the Board.**

**Next Steps—**

Committee members will continue their work individually and in smaller teams on different aspects of the Gov Docs edits.

**Next Meeting—** March 20, 2023.

**Adjournment—**

**Doug motioned and Claudette seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:51 P.M. MST

**Governing Documents Committee Minutes**  
**March 20, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill, Jewel Wiczorek.

Committee Members Absent: Morgan Squires

Landowners Present: Aija-Mara Accatino, Miriam Barker

CALL TO ORDER: 7:03 P.M. MST

**Review and approve minutes of February 20 meeting—**

After the committee corrected one item in the draft minutes, **Claudette motioned and Leslie seconded the motion to approve the revised minutes of the February 20 Governing Documents Committee meeting. Motion passed with unanimous voice vote.**

**Committee members' reports on work done since the last meeting—**

Jewel and Leslie had no further input; Doug worked on the Master Plan and the Firearms Policy; Claudette worked with her earlier list of inconsistencies across documents and spent many hours on the Master Plan, Covenants, and Firearms Policy and cross-checked issues with state laws and the Constitution of the State of Montana. Andrea drafted the meeting minutes and summarized thoughts on approaches for reaching the threshold of votes needed to amend the Covenants.

**Discussion of proposed edits to the Master Plan—**

The Committee clarified which of the different versions of the edited Master Plan on the Committee's Google Drive held all the edits proposed to date and reviewed that document. The Committee reviewed the entries it had not yet discussed, getting through about half of the document as it was too late to continue. Some of the reviewed comments identified still-unresolved issues.

**Discussion of approach for presenting the Committee's edits for Landowners' votes--**

In order to simplify the presentation of changes for Landowners' votes, Andrea suggested an approach similar to that used for the votes on the Bylaws changes in 2020.

**Next Steps—**

Members recognized the need to edit the Bylaws to permit a simplified election solely by absentee ballots similar to the arrangement used in August 2022. Any such changes need to be passed by Landowners' vote before September 2023 in order to apply for the election process in November this year. The Committee felt it needed more meeting time to accomplish its work and so will hold an additional meeting in two weeks rather than waiting for its next regular meeting.

**Next Meeting—** April 3, 2023.

**Adjournment—**

**Jewel motioned and Claudette seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 9:12 P.M. MST

**Governing Documents Committee Minutes**  
**April 3, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Douglas Gill

Committee Members Absent: Leslie Everett, Jewel Wiczorek, Morgan Squires

Landowners Present: Miriam Barker

A quorum of the Committee members being present (50% Bylaws VI.I.3), the meeting convened.

CALL TO ORDER: 7:03 P.M. MST

**Review and approve minutes of March 20 meeting—**

After the committee edited several small items in the draft minutes, **Doug motioned and Claudette seconded the motion to approve the revised minutes of the March 20 Governing Documents Committee meeting. Motion passed with unanimous voice vote.**

**Committee members' reports on work done since the last meeting—**

Andrea drafted the meeting minutes. Claudette and Andrea had independently made several edits and comments in the Master Plan. Andrea edited the Bylaws and Claudette had commented.

**Discussion of proposed edits to the Bylaws—**

The Committee recognized that it is critical to have any Bylaws changes in place by the time of the 2023 Board Election so the Bylaws amendments were moved to top priority. Implementing recent elections (prior to 2020) was extremely complex and time-consuming, training and overseeing 14+ volunteers to staff the different functions. The written-ballot-only procedure the custodian pendente used in August 2022 was much simpler. Having the GLA's accounting firm count the votes also reduced the effort considerably. The Committee discussed proposed Bylaw amendments to explicitly allow these procedures in future elections. Additional edits were to (1) bring the Bylaws into compliance with Montana law on legal representatives, which requires that any persons appointed to that role have a fiduciary responsibility for and interest in the property they are to represent, (2) ensure that committees conform to the same standards for actions at meetings, notice, waiver of notice, quorum and voting requirements as the Board, (3) use the same procedure for filling a vacancy in the office of Ombudsman as that used for filling a Board Director vacancy, (4) permit resolving tied votes for Board Directors with a coin-toss if acceptable and feasible, and (5) expand the definition of a "voted" ballot to cover ballots cast in written-ballot-only votes.

**Next Steps—**

Andrea will correct the section numbering in the Bylaws document on the Google drive. Claudette will extract the changed Bylaws sections into a Word document. A number of the proposed edits to the Bylaws could affect the process used in the November 2023 Board election, so the Committee's schedule will accelerate so proposed changes that Landowners approve can apply to that election.

**Next Meeting—** April 17, 2023.

**Adjournment—**

**Doug motioned and Claudette seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:37 P.M. MDT

The Governing Documents Committee Approved These Minutes on April 17, 2023.

**Governing Documents Committee Minutes**  
**April 17, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Douglas Gill, Jewel Wieczorek

Committee Members Absent: Leslie Everett, Morgan Squires

Landowners Present: Miriam Barker

CALL TO ORDER: 7:03 P.M.MST

**Review and approve minutes of April 3 meeting—**

After the committee edited several small items in the draft minutes, **Claudette motioned and Doug seconded the motion to approve the revised minutes of the April 3 Governing Documents Committee meeting. Motion passed with unanimous voice vote.**

**Committee members' reports on work done since the last meeting—**

Andrea drafted the meeting minutes. Claudette extracted the amended sections of the Bylaws into a separate document. Andrea and Claudette worked on several additional edits/corrections and Claudette compiled a list of notes and questions for the Project Review Committee based on items in the Governing Documents working copy of the Master Plan edits and comments in the Master Plan. Andrea created a categorized list summarizing the changes in the Bylaws amendments and providing rationales and Claudette edited it. Claudette also sent the Committee the MCA text on resignations of Directors and Officers for possible inclusion in the Bylaws or elsewhere. Claudette also inserted comments into the 2008 Road Policy to illustrate the reasons for finalizing the updated 2018 Road Policy, which was submitted for landowner comments twice and now in its 5<sup>th</sup> draft. Doug read through all the documents and had some comments.

**Discussion of proposed edits to the Bylaws—**

The Committee discussed and modified the edits, as follows: (1) In Article VI.D.4, differentiated between when an in-person election vs. a written-ballot-only election is defined as “voted.” (2) Reduced the wordiness of Article VI.D.5 describing the Board’s discretion to determine the voting procedures by deleting the specific examples. (3) In Article V.F., clarified the application of #4 and added #5 on amendments to the Covenants and Master Plan, reminding Landowners to vote as was done in the past. (4) Deleted the requirement that a legal fiduciary representative who is a landowner in their own right be in good standing themselves. Further discussion focused on: (1) adding the MCA text on resignation procedures to the Bylaws, instead considered proposing it as a policy to avoid future confusions about whether and when a resignation could be rescinded; (2) the conflict of interest policy and the concerning optics of having a small committee comprise members of the same household/family; and (3) regarding Road Policy--the importance of ensuring that roads everywhere in Glastonbury are safe and drivable, regardless of their tier, platted or subdivision status.

**Next Steps—**

The edited Bylaws amendments will be presented to the Board to forward for legal review and comment. **Claudette moved and Jewel seconded that the Governing Documents Committee’s documents “Proposed Changes in the Restated Bylaws” be sent to the GLA Board for forwarding to the attorney by Friday for review and feedback. Motion passed unanimously by voice vote.** Andrea will ask that the lawyer provide feedback by May 5, so we can revise the proposed amendments and accordingly and present the revised version at the May 11 Board meeting,

requesting Board approval to send to landowners for 30-day review. We could also present the revised Firearms Policy and the updated 2018 Road Policy for Board approval at that meeting.

**Next Meeting**— May 8, 2023.

**Adjournment**—

**Jewel motioned and Claudette seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 9:27 P.M. MDT



Andrea Sedlak &lt;sedlakgla@gmail.com&gt;

---

## GDC Draft of Proposed Bylaws Amendments

---

Andrea Sedlak <sedlakgla@gmail.com>  
To: GLA Board <board@glamontana.org>

Tue, Apr 18, 2023 at 11:36 AM

Dear Board,

The Gov Docs Committee has worked many hours to draft proposed amendments to the Bylaws that could be decided by Landowners' vote in time for any approved changes to apply in the 2023 election of Directors. At our meeting last night, the GDC voted to send the attached documents to the Board with our request that the Board have the GLA lawyer review them and provide feedback.

Two documents are attached:

- excerpts from the Bylaws showing the sections with proposed changes
- a table listing the changes and providing context/rationale

The following information about the projected sequence of events is detailed, but will give Directors the background to anticipate and understand the rationale for our upcoming requests.

The following are the necessary steps for having a final, approved set of amendments in place in time for the election:

- Board sends the draft to lawyer for review and feedback
- Committee incorporates lawyer's recommended revisions
- Board votes to send the revised draft for 30-day landowner review
- Committee revises the draft based on landowners' comments
- Committee submits a report on the comments received and the revised draft
- Board votes to send this last revision to landowners for their formal vote
- Landowners vote on the proposed amendments (30+ days written-ballot-only vote period, as used in amending Bylaws in 2020)

Later today, I will motion for the Board to send the attached draft Bylaws amendment documents for legal review. If we could have the lawyer's feedback by May 5, the timeline will work well. We would be ready to motion that the Board approve sending the revised documents for 30-day landowner review at the May 11 meeting.

Thank you for reading this. Please let me know if you have any questions.

Andrea Sedlak  
Chair, Governing Documents Committee

---

### 2 attachments



**Summary list of 2023 Bylaws Amendments, '23-04-17.pdf**  
190K



**Restated Bylaws\_final\_copy-Updated Compilation of Excerpted Edits (inline).pdf**  
174K

## **Governing Documents Committee Minutes May 8, 2023 Meeting Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill, Jewel Wiczorek; Committee Members Absent: Morgan Squires

Landowners Present: Miriam Barker, Aija-Mara Accatino

CALL TO ORDER: 7:03 P.M. MST

### **Review and approve minutes of April 17 meeting—**

After the committee edited several small items in the draft minutes, **Doug motioned and Claudette seconded the motion to approve the revised minutes of the April 17 Governing Documents Committee meeting. Motion passed with unanimous voice vote, with Leslie abstaining as she was not present on April 17.**

### **Committee members' reports on work done since the last meeting—**

Andrea drafted the meeting minutes. She also presented to the Board the proposed Bylaws Amendments documents (the excerpts and the summary table) as well as an overview describing the goal of the amendments and the process the committee envisioned going forward. The Board approved sending them to the lawyer and reported that to the committee. An additional correction came up, as the legal representative section needed a change and that went to the lawyer independently. The lawyer was asked to respond with comments by May 5, but has not yet done so. Claudette made a list of the implications of the GDC reviews of the Master Plan for the project review application forms and process and Andrea is distilling these items into a memo to succinctly summarize what the PRC needs to look at and amend to get the documents to conform to the MP. This work still needs to be finished and put before our committee before we send it on.

### **Discussion of proposed edits to the Bylaws—**

After the materials and the addendum correction went to the attorney, one other issue came up. The current Bylaws do not conform to Montana law on removal of directors (MCA 35-2-421). Discussion ensued about incorporating the Montana law in the proposed amendments verbatim, as well as specifying that Members be notified of any meeting to remove a director and the committee agreed running this further edited section by the attorney for his review. In considering whether landowners would have the appetite to review and approve so many changes to the Bylaws, it was noted that the proposed changes this year are one-third of the changes the Members voted on in 2020. Changes that conform to Montana law aren't voted on, which the presentation to the landowners should make clear.

### **Discussion of the revised Firearms "Policy"—**

The edits that Claudette added to what Doug had revised came directly out of the Montana Constitution. It is not a policy; it's an informative notice to landowners. Mostly about being good neighbors. Propose to the Board striking this as a policy and put this document into the next newsletter. **Leslie made the motion to send the new document to the Board for approval. Jewel seconded it. Motion unanimously approved by voice vote.** The old Firearms policy should be removed from the website and this document included as part of welcome package.

### **Plan to review the updated Road Policy—**

The committee should read and think about the 2008 (current) and newer 2018 draft GLA Road Policy to consider what to present to the Board. Once we get the Bylaws package out to landowners for comment we will have time to work on this.

The Governing Documents Committee Approved These Minutes on June 5, 2023.

**Next Steps—**

Since the attorney has not commented yet, the committee discussed the possible next steps. The edits to the Bylaws section on removal of directors should go to the attorney for comment. The revised Firearms Policy (now simply Firearms Guidelines) should go to the Board for approval at its next meeting. After the attorney provides feedback, the revised Bylaws package will go to the Board to approve sending it out for landowner comment.

**Next Meeting—** May 15, 2023.

**Adjournment—**

**Jewel motioned and Leslie seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:39 P.M. MDT

**Governing Documents Committee Minutes**  
**May 15, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill, Jewel Wiczorek.

Committee Members Absent: Morgan Squires

CALL TO ORDER: 7:13 P.M. MST

**Review and approve minutes of previous meeting—**

These minutes were not ready yet so this agenda item was postponed to next meeting.

**Committee members' reports on work done since the last meeting—**

At the 5/11 Board meeting, Andrea moved that the Board retire the Firearms Policy and accept the revised Firearms Guidelines as a Newsletter article and for inclusion in a welcome packet for landowners. Board approved this by unanimous voice vote. Andrea also presented the draft Bylaws Amendments, Summary Table, and Cover letter, asking that the Board approve these to be sent to landowners for 30-day review and comment. Discussion recommended several minor edits to the letter, but also noted that not all references to “election meeting” had been amended in the Bylaws document, so Andrea withdrew her motion and informed the Board that the GDC would review the further edits needed and she would resubmit her motion via a Board email vote. Andrea reported to the GDC that she had since reviewed and corrected the entire document to exclude all references to “election meeting.” She also corrected a few other things that needed to be adjusted and highlighted the recent changes in the extracted amendments document. She updated the summary table accordingly and edited the cover letter to landowners based on the recommendation in the Board meeting. Claudette and Leslie looked over these newly edited documents and had some suggestions.

**Discussion of recent edits to the proposed amendment materials—**

Cover letter. The committee discussed suggested edits from Claudette and Leslie to the cover letter.

**Doug moved and Claudette seconded that the committee send the revised letter to the Board for approval to go to landowners in the 30-day review package. Motion passed with unanimous voice vote.**

Excerpted amendments to the Restated Bylaws and Summary Table. The Committee reviewed all additional changes. As noted, those edited all references to an “election meeting.” A handful of other edits fixed a few other items. Committee members discussed at length how to clarify the extended voting period for proposed Covenants or Master Plan amendments would depend on a clear decision on the majority of proposed amendments. **Jewel moved and Doug seconded that the committee send the proposed amendment excerpts and summary table to the Board for approval to go to landowners in the 30-day review package. Motion passed with unanimous voice vote among those still in attendance (Leslie left prior to this vote).**

**Discussion of the final Firearms document--**

Verified that this document is not titled as a “policy,” but as guidelines.

**Next Steps—**

Andrea will submit the further revised Bylaws Amendments, Summary Table, and Cover letter in email motion to the Board for approval to send to Landowners for their 30-day review and comment.

The Governing Documents Committee Approved These Minutes on May 8, 2023.

**Next Meeting**— June 5, 2023.

**Adjournment**—

**Jewel motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:56 P.M. MST

# **Governing Documents Committee Minutes**

## **June 5, 2023 Meeting**

### **Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Douglas Gill, Jewel Wieczorek.

Committee Members Absent: Leslie Everett, Morgan Squires

Landowners Present: Miriam Barker

CALL TO ORDER: 7:04 P.M. MST

#### **Review and approve minutes of the May 8 and May 15 meetings—**

The committee edited several small items in both draft minutes.

- **Doug motioned and Jewel seconded the motion to approve the revised minutes of the May 8 meeting. Motion passed with unanimous voice vote.**
- **Jewel motioned and Claudette seconded the motion to approve the revised minutes of the May 15 meeting. Motion passed with unanimous voice vote.**

#### **Committee members' reports on work done since the last meeting—**

Andrea developed the minutes of the May 8 and May 15 minutes. She also submitted an email motion to the Board to approve mailing the revised Bylaws Amendments package, as corrected in the May 15 GDC meeting (excising all the references to the Annual Election Meeting. That motion, which Leslie seconded, passed with 11 affirmative votes; (Alicia did not vote.) They were mailed out on May 19, with a deadline for comments on June 26.

Claudette made comments on the Master Plan, one on May 21 and a couple today.

#### **Website Listing of Policies**

The list now includes the 2019 Election Procedures. The committee agreed that it should be deleted entirely, noting that (1) that document is not a policy, and (2) it was superseded by the 2020 Bylaws Amendments. Also, the Firearms Policy is still on and needs to be removed. The revision, Firearms Guidelines, needs to be disseminated or posted.

#### **GLA Mailing and Landowners' Receipt of the Bylaws Amendments Package**

Claudette reported that a landowner received the emailed package a couple of weeks ago, but had just received the hard-copy snail-mailed package on Friday, June 2. The committee discussed the possible delays, including the Memorial holiday weekend. Also, on the emailed notices, landowners with Gmail reported that the messages from the GLA are no longer going to the "Promotions" folder, but are now going to an "Update" folder. (However, not all landowners who use Gmail have an "update" folder.)

#### **Reviewed Landowner Comments Received to Date**

Just a couple of people responded. A number of comments were very positive. Andrea read the comments and reviewed some confusions and further explanations that may be needed.

#### **Schedule for Finalizing and Mailing the Bylaws Amendments Ballots**

The Committee updated the draft timeline to insert the actual date the Bylaw Amendments was mailed for landowner comment; to offer the Q&A session for landowners before the ballot mailing (on July 5); obtain Board approval for the report on landowner comments and the final ballot package at its July 13 meeting; and coordinate with the mailing of the Ombudsman ballot.

The Governing Documents Committee Approved These Minutes on June 19, 2023.

**Next Steps—**

Andrea will send the revised schedule to the GDC members.

**Next Meeting—** June 19, 2023.

**Adjournment—**

**Jewel motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:22 P.M. MST

**Governing Documents Committee Minutes--Draft**  
**June 19, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Douglas Gill, Jewel Wieczorek, Leslie Everett.

Committee Members Absent: Morgan Squires

Landowners Present: Miriam Barker, Joe Bezotsky

CALL TO ORDER: 7:05 P.M. MST

**Review and approve minutes of the June 5 meetings—**

The Committee edited several small items in the draft minutes.

- **Jewel motioned and Claudette seconded the motion to approve the revised minutes of the June 5 meeting. Motion passed with unanimous voice vote (with Leslie abstaining, since she did not attend).**

**Committee members' reports on work done since the last meeting—**

Andrea developed the minutes of the June 5 meeting. This afternoon, Claudette made extensive comments as a Landowner on the Bylaws Amendments. Discussion noted that her several efforts to send to the info account did not appear in the Board emails.

**Reviewed Landowner Comments Received to Date**

Only Claudette submitted comments since the last GDC meeting. The Committee extensively discussed her thoughts about reworking the amendment that clarified the meaning of a “full” term in the term limits clause and about the edits to the proxy clause that she felt was not aligned with the requirements in Montana Law.

**Schedule for Upcoming Ballots and Mailouts**

The Committee reviewed the draft timeline for the Bylaw Amendments; the Ombudsman ballot activities; the Nomination mailing for the Directors Election; and the Annual Directors Election ballot activities. Noted several concerns: the close timelines of the Bylaws Amendments ballot mailing and the Ombudsman ballot mailing; the complexity of the mailings in order to ensure security checks; and the small number of Election Committee members available to work on anything. Andrea described the manual process that has been used to ensure precise accuracy of the ballot packets that get mailed. Jewel volunteered to help with the assembly and stuffing the weekend before the mailing. Leslie said she could possibly help.

In considering the timeline, the Committee observed that certain scheduled dates are on the heels of the July 4<sup>th</sup> holiday weekend and decided the dates (given below) for its next meeting, for the Q&A session, and for the Committee’s debriefing immediately after the Q&A to address implications of any issues that Landowners raised.

The Committee suggested that a banner be put on the website about the Q&A session to alert Landowners. The calendar is now functional, but it’s necessary to scroll down to see it and our Committee meeting tonight is not on it. In the past, meetings on the calendar had the details of the meeting on the entry—the agenda and how to join the meeting. If possible, see about adding those.

**Problem with Receipt of Messages to the GLA's info@ Account—**

Besides Claudette's problem with getting emails into the info@ account, described earlier, a landowner said she had submitted her nomination but the Board never received it. The Committee noted that nonreceipt of messages through the info@ account issue may be very general and could mean that the Board has not seen a number of incoming messages.

**Agenda Edits—**

Due to the lateness of the hour, the remaining agenda item (considering the Master Plan implications for revisions of the PRC forms) was tabled to the future, together with the revised Road Policy and the Resignation Recission policy.

**Landowner Comments—**

Attending landowners had no comments.

**Next Steps—**

For review at the Committee's next meeting, Andrea will compile all the Landowner comments into the Report to the Board on Landowners' feedback, along with the proposed version of the Excerpted Bylaws Amendments.

**Next Meetings—**

June 28: the Committee will review and revise the proposed Bylaw Amendments based on all Landowner comments; July 8: the Committee will host the Q&A session, immediately followed by its meeting to decide on any necessary adjustments based on Q&A input.

**Adjournment—**

**Leslie motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:47 P.M. MST

**Governing Documents Committee Minutes--Draft**  
**June 28, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Jewel Wiczorek  
Committee Members Absent: Doug Gill, Leslie Everett, Morgan Squires  
Landowners Present: Aija-Mara Accatino, Miriam Barker

CALL TO ORDER: 6:27 P.M. MST

**Review and approve minutes of the June 19 meeting—**

Not available yet, so this agenda item was postponed to a future meeting.

**Committee members' reports on work done since the last meeting—**

Andrea developed the half sheet notices to go out (1) with the quarterly assessments to alert them they must be paid up by July 31, and (2) to Landowners with Covenant violations telling them they need to correct the violation by July 31. The first is went before the Board and was approved and is now in the hands of the Treasurer to go out with July 1 assessments. The second is before the Board for an email vote and is still in process. She is also still finalizing the list of those who have not come into compliance for Covenant violations. Finally, she also worked on the logistics for the ballots mailing—volunteers, timeline, and materials. That plan is still in process. Andrea also collected all the Landowner comments and tried to get the Q&A session announced.

**Reviewed Landowner Comments Received to Date**

For use in this meeting, Morgan had Mady, the GLA Executive Administrator, put the comments into a draft table (partly completed), organized by each section of the proposed Amendments. The Committee worked with this table, with Andrea adding other Landowner comments to complete the table during the discussion. The Committee first reviewed the general comments that were not specific. None required any changes to the proposed Amendments. Next, the Committee systematically went through the draft table to consider the comments specific to particular proposed Amendments. Discussion on several of these led the Committee to edit the proposed Amendment, which will be treated in detail in the Committee's Report to the Board on the Landowner Comments. During our review of Landowner comments, Morgan sent a revised version of Mady's table, formatted differently. That visually clearer format will be used for the Report to the Board.

- **Jewel motioned and Claudette seconded the motion that Andrea draft a Report to the Board based on the Committee's decisions in this meeting, to be first sent to this Committee for final approval vote. Motion passed with unanimous voice vote.**

**Landowner Comments—**

Attending landowners had no comments.

**Next Steps—**

Andrea will draft Report to the Board and send it to the Committee for review and final approval.

**Next Meeting—**

After the Q&A session, at 2:00 PM MDT on July 8.

**Adjournment—**

**Claudette motioned and Jewel seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 9:59 P.M. MDT

**Governing Documents Committee Minutes--Draft**  
**July 8, 2023**  
**Via Zoom and Phone**

**Q&A Session on Proposed Bylaws Amendments**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Doug Gill, Jewel Wiczorek  
Committee Members Absent: Leslie Everett, Morgan Squires  
Landowners Present: Jerry Ladewig

The Q&A session began at 1:06 P.M. MDT. Jerry joined the Q&A at 1:11 P.M. No other landowners joined. Jerry had no questions on the Bylaws. Jerry left at 1:29 P.M. The Committee proceeded with the committee meeting, scheduled to follow the Q&A Session.

**Committee Meeting**

CALL TO ORDER: 1:42 P.M. MDT

**Review and approve minutes of previous meetings—**

Not available yet, so this agenda item was postponed to a future meeting.

**Discuss issues raised in the Q&A—**

None were raised; so this agenda item was skipped.

**Identify any further revisions needed in the Proposed Bylaws Amendments materials—**

The committee reviewed the following documents:

- Summary of Proposed Changes in the Restated Bylaws, Landowner Comments and Governing Documents Committee Responses
- Governing Documents Committee Report to the GLA Board: Recommended Revisions to the Proposed Restated Bylaws Based on Landowner Comments
- Bylaws Vote—Letter to Landowners
- Ballot: Proposed Amendments to the Restated Bylaws
- Excerpted Text from the GLA Bylaws with Proposed Amendments

During discussion the committee identified minor corrections/edits.

**Doug motioned to approve presenting these documents to the Board for their review and approval; Claudette seconded the motion, which passed with unanimous voice vote.**

**Landowner Comments—**

No landowners were attending at this point.

**Next Steps—**

Andrea will present the documents to the Board and move for approval to send the ballot package (cover letter, ballot, and excerpted text) to all landowners in good standing.

**Next Meeting—**

Regular GDC meeting day and time: 3<sup>rd</sup> Monday at 7:00 P.M. .

**Adjournment—**

**Doug motioned to adjourn and Jewel seconded the motion, which passed with unanimous voice vote.**

MEETING ADJOURNED 3:00 P.M. MDT

# **Governing Documents Committee Minutes**

## **July 17, 2023 Meeting**

### **Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Douglas Gill, Jewel Wieczorek.

Committee Members Absent: Leslie Everett, Morgan Squires

Landowners Present: Miriam Barker

CALL TO ORDER: 7:03 P.M. MST

#### **Review and approve minutes of the June 19 and June 28 meetings—**

The committee edited one small item in the June 28 draft minutes.

- **Jewel motioned and Claudette seconded the motion to approve the revised minutes of the June 19 meeting. Motion passed with unanimous voice vote.**
- **Claudette motioned and Doug seconded the motion to approve the revised minutes of the June 28 meeting. Motion passed with unanimous voice vote.**

The 7/08 meeting minutes were not ready for review and approval.

#### **Committee members' reports on work done since the last meeting—**

Andrea developed the minutes of the June 19 and June 28 minutes. She also prepared the report to the Board on the Committee's review of Landowner comments on the proposed Bylaws Amendments, prepared the revised Bylaws Amendments package for mailing, and presented both items to the Board for approval in its 7/13 meeting. The Board voted to approve all these materials. Claudette discovered and sent to the committee a provision in Montana Law (noted again below) that forbids preferential treatment of subsets of landowners based on anything.

#### **Road Policy Update Review**

The Committee was not yet prepared to review these. Claudette suggested the committee members review the old policy along with all of Claudette's comments on it and the draft of the updated Road policy. These were tabled to a future meeting and committee members will review these materials before discussing them.

#### **Discriminatory Rules**

MCA 35-2-513, Differences in rights and obligations of members, requires that "All members have the same rights and obligations ... unless the articles or bylaws establish classes of membership with different rights or obligations..." The Covenants build in preferential treatment of owners living on secondary roads. The newly proposed amendments to the Bylaws remove the preferential requirement that Ombudsmen reside in NG or SG. Note that any proposals to require residency requirements for holding Director positions would also be forbidden by this MCA clause.

#### **Updated Schedule**

Andrea reminded the committee members that she had sent them the updated schedule and explained that the due dates should not be Fridays and should provide extended time to process the ballots when any holiday weekend occurs during the processing window. The Committee had questions about the plans for the Annual Meeting, but noted that this is the Board's responsibility.

#### **Rescission of Resignation Policy**

Question about the proposed rescission of resignation policy for this committee to consider and finalize.

### **Memo from Gov Docs to the Project Review Committee**

It is important to convey what our committee has noted about the contradictions between the PRC forms. We're preparing a memo to them to summarize what we've seen. We need to finalize our review of the Master Plan implications for the PRC forms and process and finalize this memo. This is also tabled to a future meeting.

**Next Meeting**— August 21, 2023.

**Adjournment**—

**Jewel motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 7:45 P.M. MST

**Governing Documents Committee Minutes**  
**August 21, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill  
Committee Members Absent: Morgan Squires

Landowners Present: Miriam Barker

CALL TO ORDER: 7:04 P.M. MST

Jewel Wiczorek resigned from this committee earlier today, as she assumed the responsibilities of Treasurer upon Kozlik's resignation.

**Review and approve minutes of the July 8 and July 17 meetings—**

Only the draft minutes of the July 8 meeting were ready for review. The committee edited several small items about the attendees.

- **Claudette motioned and Doug seconded the motion to approve the revised minutes of the July 8 meeting. Leslie abstained but remaining committee members in attendance approved with voice vote**

**Committee members' reports on work done since the last meeting—**

Andrea developed the minutes of the July 8 minutes. She also reviewed the rest of the document on the Master Plan implications for the PRC forms and procedures and inserted important points into the memo for the PRC. She also made a lot of comments on the MP notes document because many of them had implications for changing the MP itself. Claudette found the 2 documents, the tiered Road Plan and the old Road Policy draft with her comments put those on the shared drive.

**Complete Memo from Gov Docs to the Project Review Committee**

Our committee noted contradictions and inconsistencies between the PRC forms and the Covenants and Master Plan. In this meeting, we finalized our review of the Governing Documents' implications for the PRC forms and process and completed our memo to the PRC (attached here).

**Doug motioned and Claudette seconded the motion to send this memo to the Project Review Committee. Motion passed with unanimous voice vote.**

**Landowner comments**

Miriam Barker's only comment was to say our committee is doing a good job.

**Next Meeting—** September 25, 2023.

**Adjournment—**

**Leslie motioned and Doug seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 8:12 P.M. MST

To: Project Review Committee  
From: Governing Documents Committee  
Date: August 21, 2023  
Re: Implications of GDC work on the Master Plan for updates/ corrections to PRC forms

Our work has led to a number of recommendations and clarifications relevant to your committee's work:

1. The Master Plan and Covenants give contradictory guidelines on various subjects. Because the Restated Covenants (1997) refer to the Master Plan and the Master Plan was passed much more recently (2007), it would be helpful for the Preliminary Project Approval Form to have a statement that the Master Plan requirements take precedence if they conflict with the requirements in the Covenants. (For instance, there is a contradiction concerning the set-back required.)
2. The Preliminary Application form introduction (paragraph 2) mentions the GLA getting a court injunction. But that's down the road after other efforts to correct an issue. Also, nowhere do the instructions or forms point out that starting any project without a fully approved project application will incur a late-project application fee of \$250 and the landowner will be not in good standing and ineligible to vote. That needs to be clear in the Preliminary Application form.
3. The Master Plan section 1.5 on Travel Trailers (currently inclusive of RVs) states that travel trailers only be used as residential units during construction of the primary residence and then for no longer than 18 months. This maximum restriction is not mentioned in the guidance on the GLA website under "Mobile Home Standards" (<http://www.glamontana.org/mobile-home-standards/>). Section 1.3 "Temporary Mobile Home or Travel Trailer Use," which states that a temporary waiver for residential use can be requested for 1 year unless the Board grants an extension.
4. The following provision in the Master Plan is not clear in the "Projects and Improvements" guidance on the website and the PRC has not been following it:

2.0 Residential Design Criteria/Project Review "...New applications for building projects must be submitted at least two (2) weeks before a subsequent Board meeting."

Discussing project applications at a Board meeting that were sent to the Board at the last minute do not give Board members adequate time to examine the multiple documents involved.

5. Inspection:

Per Covenant 2.03, the Project Review Committee has the right to inspect and review all construction with a 7-day notice at any time from the beginning to the final completion of the project. Note that the Application for Preliminary Project Approval contradicts this in stating that only a 24-hour notice is given.

Please revise that document.

6. Inconsistency in the “Projects and Improvements” guidance on the website:

The link at the end of “Project Review Application Materials” to “Project Review Application Process & Procedure Instructions” leads to an outdated list of projects that do not need an application.

This caused confusion just in the past week. Please review the associated forms to ensure that none of them follows the outdated list of projects that do not need an application.

7. Driveways and Parking:

Driveways must be installed in accordance with the GLA Road and Driveway standards. This means the installation of proper foundations and a minimum of 12” diameter culvert where roads and driveways intersect with other roads. Successive PRCs were negligent in these areas causing further deterioration to Glastonbury’s fragile roads. The PRC Form E: Road and Driveway should include these requirements.

8. Minimum Size of a Subdivided Tract or Lot:

The Master Plan, 3.3 states: “The minimum size for a subdivided Tract or Lot within any of the Residential Topographical Areas shall be as indicated in Residential Topographical Areas and Density Schedule (Section 3.5). Even with a variance no Tract/Lot may be less than two (2) acres. Tracts/Lots completed prior to the adoption of the Master Plan are grandfathered.”

Throughout the years, numerous landowners avoided this GLA regulation via the PRC Form D: Subdivision / Family Conveyance / Boundary Adjustment. Landowners have bypassed the GLA and registered paperwork directly with Park County or created new divisions of land with new lot numbers. Our Governing Documents Committee asks the PRC to help close this loophole by clarifying the regulation for Landowners through revisions to the PRC guidelines and forms (especially Form D) and applying the requirement in Project Reviews.

9. Criteria for Granting a Variance:

Related to the issue concerning subdivisions, landowners have been allowed to violate the Master Plan clause 4.2 4: “No more than one (1) variance process will be allowed per Original Parcel for reducing acreage size below the minimum acreage or that would increase the number of Tracts/Lots beyond that which is established in the Residential Topographical Areas and Density Schedule (Section 3.5).”

This stipulation has been disregarded in landowners’ misuse of the Family Conveyance Form to create more than one subdivided lot on a given parcel thereby violating the minimum required acreage per Original Parcel.

## Commentary:

- **1.** In 2022, the court-ordered custodian pendente lite did oversee the 'election' without an Annual Meeting, the terms of which are stated in MT Code Annotated, 35-2-533 - Action by Written Ballot. The reason the election was "not linked to the Annual Meeting," was to expedite the 2022 election. Ballot Packets were mailed on July 15, 2022 and voting ended on August 19, 2022, well in advance of the customary November Annual Meeting. Voting results were issued ~September 8th.

**Note:** All 12 Board seats were open - a rarity that has not occurred since the inception of the GLA in 1997. Those with the most votes in NG/SG won the 2-yr. seats while the 1-yr. positions were awarded to the remaining 6 candidates in 1997 and 2022.

- **1a - Article VII. D.** is missing from the attached text of the proposed GLA Bylaws amendments.
- **1a - Article V. F. Voting, par. 1** - This proposed change mandates that votes/ballots are mailed, emailed or hand-delivered while abolishing in-person voting at Annual Meetings. Delivery of mailed-in ballots can often be slow in both directions, especially with respect to the turnaround times in remote locations, envelopes can be lost or discarded. This is a problem that is untraceable. Compounding the issues with mail-in-ballots only, is that landowners might be prone to hand over their mail-in ballots, aka absentee, considering that proxy voting for electing directors is being eliminated under the proposed 2023 Bylaws changes, as currently proposed.
- **1b - Article V. D. par. 3** - In the interest of building community and cultivating involvement by more landowners, there needs to be a choice regarding the timing and logistics of elections. It is well-worth considering the resumption of in-person Annual Election Meetings, retaining the October 31st deadline to be in good standing to vote. The above-mentioned problems with mail-in-only voting, would thereby be reduced. The identities and signature verifications of voters are given, through the sign-in table records, verifiers confirm the validity of mail-in ballots, and then all cast ballots deposited in the NG/SG boxes.

**Note:** The ballot counting could still be done by a neutral 3rd party, such as ATS, removing half of the training sessions for volunteers. (Directors-elect are not officially seated until the first half of December). Reports from officers and committee chairs would be part of the inclusive, dynamic meeting along with providing a period for Q&A's, meeting landowners, socializing and so forth. There is already an excess of impersonalization among constituents and the GLA Board due to the habitual use of conducting community business via virtual meetings.

In the case of an Annual Election Meeting only: In the interest of a secure and transparent election, the in-person sign-in sheets should be compared to the sign-in sheets compiled by ATS to verify the [credibility.in](#) the tabulation of election votes, while simultaneously helping to pinpoint possible mail-in ballot

issues and to also verify that the number of disqualified ballots is equal to those collected. This action would provide additional checks and balances to this process. (People make unintentional errors, as occurred in GLA elections).

Nonetheless, I think there needs to be an audit conducted by GLA, (done in some past elections), before the election results are conclusively certified before a notary public.

- **1b** - Article V. F. Voting, par. 5.- The language is confusing. It sounds as though there are two 90-day extensions for voting that counters the committee's intent of only one 90-day extension period.
- **2a** - Article V.G.2. Proxy - This section should be either completely overhauled or combined with #1, "Legal Fiduciary Representatives," effectively deleting #2.

According to *MCA 35-2-539 Proxies*, initially it appears as though they are accepted. However, according to the following stipulation (6), the acceptance of Proxies is:

"Subject to **35-2-542** and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment."

**MCA 35-2-542**, requires a proxy designee to have the same legal fiduciary status as now depicted in Bylaws Article V. G. 1.

Here is the link to 35-2-542. For **mutual benefit corporations**, please see 2 (d) i-ii and 3-5.

[https://leg.mt.gov/bills/mca/title\\_0350/chapter\\_0020/part\\_0050/section\\_0420/0350-0020-0050-0420.html](https://leg.mt.gov/bills/mca/title_0350/chapter_0020/part_0050/section_0420/0350-0020-0050-0420.html)

- **2b** - Article VI. D. 2 - A clearer way to state what the limit is for a Director's term of office is to state, "four consecutive years," and delete the word "elected." Due to unusual legal circumstances between 2020 to 2022, the Annual Election Meeting was postponed for nearly 2 years, yet Directors continued to serve in our "*unelected*" positions. Any and all time served should count toward the definition of a Director's term, elected or not.

Directors who were elected for 1-yr. terms and subsequently seated on September 27th, 2022, will have served 15-month terms by the time the new GLA Board is elected this November and formally seated in early December 2023.

- For MT law regarding this topic, please refer to MCA 2021 - 35-2-419, Terms of Directors Generally - Staggered Terms:

[https://leg.mt.gov/bills/mca/title\\_0350/chapter\\_0020/part\\_0040/section\\_0190/0350-0020-0040-0190.html](https://leg.mt.gov/bills/mca/title_0350/chapter_0020/part_0040/section_0190/0350-0020-0040-0190.html)

- **2d** - Article VI. I.4. par. 2 - For legal directives and/or edits to the bylaws proposal on this topic, see MCA 2021 - 35-2-433, *Committees of the Board*:

[https://leg.mt.gov/bills/mca/title\\_0350/chapter\\_0020/part\\_0040/section\\_0330/0350-0020-0040-0330.html](https://leg.mt.gov/bills/mca/title_0350/chapter_0020/part_0040/section_0330/0350-0020-0040-0330.html)

Claudette Dirkers, NG 29-B

# **Governing Documents Committee Agenda**

**September 25, 2023 – 7PM MDT**

**Zoom link: <https://us02web.zoom.us/j/6364697554>**

**Meeting ID: 636 469 7554**

**Call-In Phone Number: +1-346-248-7799**

- 
- 1) Call to Order
  - 2) Review and approve minutes of 7/17 and 8/21 meetings
  - 3) Report on committee members' work done since the last meeting
  - 4) Review and edit as needed, the updated Road Policy
  - 5) Discuss policy on recission of resignations
  - 6) Landowner comments
  - 7) Determine the next meeting date
  - 8) Adjourn
-

**Governing Documents Committee Minutes--DRAFT**  
**September 25, 2023 Meeting**  
**Via Zoom and Phone**

Committee Members Present: Andrea Sedlak (chair), Claudette Dirkers, Leslie Everett, Douglas Gill

Committee Members Absent: Morgan Squires

Landowners Present: None

CALL TO ORDER: 7:00 P.M.MST

**Review and approve minutes of July 17 and August 21 meetings—**

The committee edited one small item about the attendees in the August 21 meeting.

- **Claudette motioned and Doug seconded the motion to approve both the 7/17 and 8/21 meeting minutes. Leslie voted ‘yes’ on the 8/21 but abstained on the 8/21 because she was not present. Remaining committee members in attendance approved with voice vote**

**Report on committee members’ work done since the last meeting—**

Andrea developed the minutes for both meetings. She also read through the Road Policy material. Claudette and Doug also read through that material.

**Memo from Gov Docs to the Project Review Committee**

Claudette asked about the committee’s memo to the PRC on the conflicts between the governing documents and the PR forms and instructions. Andrea reported that she sent Hendrik the committee’s memo on the conflicts between the governing documents and the PR forms and instructions and copied the Board. Hendrik resigned from the Board shortly after that and he had not forwarded the memo to John, new chair of the PRC, so Andrea sent it to John directly.

**Votes on the Amended Bylaws**

Claudette asked about the votes on the Bylaws Amendments. Andrea reported that she had received a password-protected pdf from ATS and still needed to unlock it to see the details on the votes.

**Updated Road Policy**

Claudette reviewed the historical events that led to the original (2008) Road Policy, the sequence of two rounds of landowner review and comment periods, extending into 2018, and the way these were processed to create the 5<sup>th</sup> revision of the new Road Policy, which is the most current document. The committee reviewed this document line by line.

One lengthy discussion focused on the distinction between arterial and collector roads, a numerical cut-off will shift as more dwellings are constructed, yet acknowledging that road use varies by many factors and alternative methods for differentiating road usage all have problems and would overly complicate the measurement. Discussion on the impact of vacation rentals recognized that not all rentals are the same and do not necessarily impact road wear and maintenance more than an owner-occupied dwelling. However, the committee thought that the GLA should consider developing a policy on rentals to ensure that all owners who rent whether to vacationers or long-term follow community standards (e.g., avoiding disturbances, trespass, road damage and on-road parking).

The Governing Documents Committee approved these minutes on \_\_\_\_\_.

The draft new Road Policy mentions having a licensed professional road engineer every 5 years. The last was done in 2018. In the end, the committee decided to design the document to withstand the test of time by linking the arterial/collector distinction to the cut-offs defined in the latest road engineer report, only specified in an addendum. This allowed for updating the road policy in future years by simply changing the addendum, rather than the text of the policy.

The committee also discussed the potential for future maintenance, improvement, and snow removal costs to be funded via special assessment districts. Otherwise, the fact that all other landowners are subsidizing those costs for a small number of landowners could raise protests, because the inequity rankles people.

Under Road Priorities, the committee made several edits, clarifying that snowplowing is limited to platted roads, and moving the mention of safety as a priority to the beginning of this section, making it a preface.

Rather than vote on this revision (version 6 draft) at the meeting, the committee decided to sleep on it and then possibly vote on it by email to move it to the next steps.

**Policy on rescission of resignations.**

Tabled to a future meeting due to the lateness of the hour.

**Landowner comments**

None present.

**Next Meeting**— October 16, 2023.

**Adjournment**—

**Doug motioned and Leslie seconded the motion to adjourn the meeting. Motion passed with unanimous voice vote.**

MEETING ADJOURNED 9:05 P.M. MST

## **Governing Documents Committee Agenda**

**October 23, 2023 – 7PM MDT**

**Zoom link: <https://us02web.zoom.us/j/6364697554>**

**Meeting ID: 636 469 7554**

**Call-In Phone Number: +1-346-248-7799**

- 
- 1) Call to Order
  - 2) Review and approve minutes of 9/25 meeting
  - 3) Report on committee members' work done since the last meeting
  - 4) Review further edits in the updated Road Policy and vote to move it forward
  - 5) Review Claudette's edits in the PRC's Preliminary Project Review form
  - 6) Discuss policy on rescission of resignations
  - 7) Landowner comments
  - 8) Determine the next meeting date
  - 9) Adjourn
-

# EXCERPTED TEXT FROM THE GLA BYLAWS WITH PROPOSED AMENDMENTS

## ARTICLE IV MEMBERS

**C. Non-Liability of Members.** The Members shall not be individually or collectively liable for the actions, debts, liabilities or other obligations of the Association.

## ARTICLE V MEETINGS OF MEMBERS

**A. Place of Meeting.** Meetings of the Members may be held at a suitable place convenient to the Members as designated by the Board of Directors. Members may participate in a physical meeting or conduct the meeting through the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is considered to be present in person at the meeting. Meetings may also be held entirely virtually.

**B. Annual Meetings.** The first Annual Meeting of the Members of the Association shall be held within one year of the date of incorporation of the Association, such date to be set by the initial Board of Directors. Thereafter, 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 meetings, Members may submit ballots to elect Directors to the ~~there shall be elected, by the ballot of the Members, a Association~~ Board of Directors in accordance with the requirements of Article V, paragraph F, and Article VI, paragraph D, of these Bylaws. The President and Treasurer shall report on the activities and financial condition of the Association. The Members may also transact such other business of the Association as may properly come before them.

...

**D. Notice of Meetings.** ...Said notice shall be mailed, ~~or faxed,~~ or e-mailed to each Member at his address, ~~or fax number,~~ or e-mail address of record with the Association or at such other address, ~~or fax number,~~ or e-mail address as the Member shall have designated by notice in writing to the Secretary. ~~Notices of Annual Meetings shall include a ballot for electing the Board of Directors and a proxy form.~~ The mailing of notice of a meeting in the manner herein shall be considered service of notice.

...

**F. Voting.** Each Member in good standing, ~~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) appurtenant to the Member's Membership Interest(s) ~~inat~~ all meetings and all written-ballot votes of the Members. A Member is in good standing if they are not in violation of any Covenant and have paid in full all association assessments, interest and penalties. Members with multiple Membership Interests must be in good standing on all Membership Interests they own in North

and South Glastonbury in order to be eligible to vote. In elections that include in-person voting, Members in good standing can appoint any person to vote as proxy on their behalf (who need not be a Member).

For a Member to be considered paid in full, payments for current quarterly assessment installments and any interest and penalties must be postmarked on or before the due date specified in Covenant 11.03, that immediately precedes ~~an~~the election ~~meeting~~ or initial voting deadline for a written-ballot-only vote, as defined below~~meeting~~. Payments for past due quarterly assessment installments and any accrued interest or fee, must be received by the due date specified in Covenant 11.03. Delinquent landowners may ask the GLA Treasurer for their full amount due on that quarterly date. Payments made after that due date, ~~including any walk-in payments on the day of the GLA Election or voting meeting,~~ will be accepted, but these payments will not make the Member you eligible to vote ~~on that day in that election or on that ballot.~~

For purposes of tabulating the ~~written~~ vote and consent of the Members of the Association, it is hereby provided that:

...

4. On questions submitted to the Membership for votes, if the total number of qualifying votes to approve the question equals or exceeds fifty-one percent (51%) of the total Membership Interests of the Members in good standing who cast ballots, votes at the meeting, the vote shall be effective and shall have passed. This criterion does not apply to election of Directors where candidates are elected by receiving more votes than other candidates or to amendments of the Covenants or Master Plan, which require approval by at least fifty-one percent (51%) of all Membership Interests of Members in good standing.

5. Voting on amendments to the Covenants or Master Plan is by written-ballot-only, administered by a neutral party. The voting period may be extended, not to exceed a 90-day voting period, until sufficient numbers of landowners have voted to render a clear decision for or against the major portion of proposed changes and the neutral administrator may contact landowners who had not yet voted to recruit their participation during this time.

**G. Designation of Representatives.** The Association recognizes two types of representatives, legal representatives and proxies.

1. **Legal Fiduciary Representatives.** If a Membership Interest is held by a firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, a “Designation of Legal Fiduciary Representative for Legal Entity” form must be executed and filed with the Association appointing and authorizing one person to speak for the legal entity in all matters while they function as such, including voting in-person or by proxy, submitting complaints or questions to the Board, or running for election to the Board or to the Ombudsman Office. Per Montana Law (MCA 35-2-242), a Legal Representative must hold fiduciary responsibility for the property (e.g., trustee of a trust, owner, officer or administrator of a corporation, legal guardian), or have full power of attorney for the landowner’s affairs. This authority must be documented by a notarized legal instrument that is available to the GLA upon request. ~~Designated Legal Representatives who are also landowners themselves must be in good standing on their own Membership Interests~~

~~in order to serve as the designated representative.~~ The Legal Fiduciary Representative appointment will remain in effect for three years from the date of signing at which time it must be renewed by filing a new form. The legal entity can revoke that appointment any time by notifying the Association and filing a new Legal Fiduciary Representative legal entity designation form.

2. **Proxy.** Any Member can appoint a proxy representative to vote for their Membership Interest(s) at any or all in-person votes Meetings of the Members of the Association. Proxies are not authorized to vote on any absentee ballot or in any vote conducted by written-ballot only. Any Member may designate any person to vote as proxy on his or her behalf, except that proxy appointees who are also Landowners themselves must be in good standing on their own Membership Interests in order to vote as proxies. Directors are not permitted to act as proxy appointees. A Member may appoint a proxy~~The appointment may be submitted~~ on the "Proxy Designation Form" or by using another format that fulfills the validity requirements. To be valid, a proxy must be in writing, dated, executed with a valid signature by the Member of record or legal representative of such Member and filed with the authorized election staff ~~by~~at the appointed time for the voting~~a~~ meeting. Such proxy shall be effective and remain in force until voluntarily revoked, amended or terminated by operation of law, until the expiration of one year after its execution ~~or until the date of the next Annual Meeting after the proxy was used at the previous Annual Meeting.~~ A proxy is revocable by the Member appearing in person and voting before his or her proxy representative votes. The Association shall continue to recognize a proxy that has not expired until it receives notice of such revocation, amendment or termination.

## ARTICLE VI BOARD OF DIRECTORS

...

**C. Nomination of Directors.** Prior to each Annual Election Meeting, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every Member in good standing who has an interest in serving as a Director may file as a candidate for any Board or Ombudsman position up for election (Bylaws, Article VI. C.). The packet will include a nomination letter (explaining eligibility criteria for voting and for running as a candidate), the nomination form, instructions on completing the nomination form, ~~and~~ guidelines for candidate biographies, and for legal entities, the Legal Fiduciary Representative Form and cover letter. Candidates whose nominations are received after the closing date will not be listed on the absentee ballot mailed to all Members. Any voting landowner may write-in their vote for unlisted candidates. A Member who wishes to be considered for the Board after the nomination period deadline is solely responsible to inform Membership of their candidacy and request Members' write-in votes. Write-in votes will also be allowed for candidates who are nominated from the floor at any in-person the Annual-Election Meeting. ~~Nominations shall also be permitted from the floor at the Annual Meeting.~~

...

To be accepted as candidates, nominees~~Members~~ must be in good standing; that is, paid in full on all Membership Interests as of the last quarterly assessment due date and not in violation of any Covenant, which they declare by signing the nomination form or by accepting their nomination from the floor. ...

A candidate who is later discovered to have been ineligible as of the nomination form filing date or who later becomes ineligible prior to the election due to a discovery of a covenant violation, or due to delinquency of assessment debts prior to the election, forfeits their candidacy. If time permits, the Board will attempt to notify the candidate that they will not be listed on the final ballot. ...

To be distributed in the election packet, ~~c~~Candidate biographies cannot exceed 200 words. They should state the candidate's qualifications, experience and goals in serving on the Board or as Ombudsman, describing how they will contribute to the Association. ...

#### **D. Election Process and Term of Office.**

1. Board members serve for 2-year terms, with one half of the Board elected each year. At each Annual Election Meeting, the Members shall elect representatives to fill positions on the Board of Directors: three seats in North Glastonbury and three in South Glastonbury.

...

2. No Director may serve more than two consecutive elected 2-year full terms. Directors who have served two consecutive elected full 2-year terms are not eligible for re-election until they are off the Board for one annual cycle. A partial term, served for any reason due to filling an off-cycle vacancy on the Board, shall not count as a full term.

3. At least 30 days before the Annual Election Meeting, the GLA will distribute election packets to all Membership Interests, including the Absentee Ballot for the appropriate division (North Glastonbury or South Glastonbury), the corresponding candidate biographies, instructions for voting, ~~and~~ election procedures, proxy form (if the election will include in-person voting), and for legal entities, the Legal Fiduciary Representative Form and cover letters. Members can submit their Ballots in advance of an in-person voting meeting or during a written-ballot-only vote by any means (mail, fax, email, or hand-delivered).

4. During in-person voting, ~~a~~A ballot is defined as "voted" once it is deposited into the sealed Ballot Box.

...

When voting is by written-ballot only, without any in-person voting, a ballot is defined as "voted" when it is duly received at the designated office by the defined deadline. No ballots cast during a written-ballot only can be revoked.

5. The Board of Directors will determine the specific procedures for implementing the Annual Election, consistent with the provisions here, and will send these to Members in the election packet. The Board has the discretion to determine the timing, duration, mode, and administration of the Election.

6. In the event that the open Board positions cannot be filled due to a tie vote between or among candidates, the Board may approve breaking the tie with a coin toss. If that approach is not acceptable to the candidates or fails for any reason, there shall be a run-off election between the tied candidates. ... Voting in the run-off shall be written-ballot only (mail-in, fax or email) ~~written ballot only~~.

**E. Vacancies.** Notice of vacancies in the Board of Directors between Annual

~~Elections~~Meetings shall be mailed, delivered personally, faxed, or e-mailed by the Secretary, or other person designated by the President, to each Member within the affected area (Glastonbury North or Glastonbury South) within thirty (30) days of the occurrence of the vacancy. ... Each person so elected shall be a member of the Board of Directors until the next Annual Election ~~Meeting~~. ...

...  
**I. Committees.**

4. The majority of all Board members must approve the creation of a committee, ~~and~~ the appointment of its members, ~~and its chair~~. The chair of the Legal Committee must be the President; the chair of the Finance Committee must be the Treasurer. Other committees can be chaired by any committee member.

All committees shall keep Minutes reflecting the committee members attending and the actions taken. The provisions herein, which govern meetings, actions at meetings, notice, waiver of notice, quorum and voting requirements of the Board, also apply to ~~committees~~ Committees of Directors and their members.

...  
**N. Non-~~L~~iability of Directors.** The Directors shall not be personally or collectively liable for the debts, liabilities or other obligations of the Association.

**ARTICLE VII  
OFFICERS**

**I. Non-~~L~~iability of Officers.** The officers shall not be personally or collectively liable for the debts, liabilities or other obligations of the Association.

**ARTICLE X  
OMBUDSMAN**

**C. Nomination of Ombudsman.** Concurrent with the opening date and the closing date of the filing period for election to the Board of Director any Member in good standing may file as a candidate for the Ombudsman position. Candidates for the Ombudsman position in Glastonbury North must reside in Glastonbury North and candidates for the Ombudsman position in Glastonbury South must reside in Glastonbury South at the time of their election. ...

**E. Vacancies.** The ~~Board~~Members may fill vacancies in the office of Ombudsman in the manner specified in Article VI. E. for filling Director vacancies. ~~at an Annual Meeting or any Special Meeting called for that purpose.~~ If such vacancy occurs less than four months before the next Annual ~~Election~~Meeting, the election may be held at its regularly scheduled time. Any person elected to fill a vacancy shall be an Ombudsman for the remainder of the term of the Member whose term he is filling and until his successor shall be elected and shall qualify.

**F. Removal of Ombudsman.** Members may remove an Ombudsman elected by Members without cause at any meeting of the Membership by majority vote. An Ombudsman elected by the Board to fill a vacancy per E. above can be removed by a two-thirds vote of the Board.

**ARTICLE XII  
AMENDMENTS**

**A. Interpretation and Amendments.** These Bylaws and the Articles of Incorporation may be amended, repealed or altered, in whole or in part, whenever at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time ~~attending any Annual or Special Meeting~~, where such proposed action has been set forth in the ~~in the ballot materials~~~~call and notice of such meeting~~, shall have voted in favor of such amendment....

THESE RESTATED BYLAWS were adopted by the membership of the Glastonbury Landowners Association, Inc., a Montana nonprofit corporation, on the 22nd day of August, 2020<sup>[1]</sup>, and we, the undersigned Directors, do hereby certify that the same do now constitute the Bylaws of said Association.

Signed:



## Proposed Bylaws Amendments

May [redacted], 2023

Dear Landowners:

Your Governing Documents Committee has been hard at work, updating our Glastonbury Landowner's Association (GLA) Bylaws to increase the Board's flexibility in implementing elections, conform to the Montana nonprofit law, clarify text, and correct errors/typos. Since the changes are limited to a few sections, so only the edited sections are provided here.

The GLA lawyer has reviewed the proposed amendments and the GLA Board of Directors has approved sending the enclosed Draft Restated Bylaws revisions for your review. Also enclosed is a Summary Table listing and providing the rationale for the changes. Please submit your comments to the GLA Board by [redacted], 2023, in any of the following ways:

- ◆ E-mail to [info@glamontana.org](mailto:info@glamontana.org),
- ◆ GLA Voice Mail at 406-451-0033
- ◆ Mail to GLA at Post Office Box 312, Emigrant, MT 59027

Please identify yourself in some way—by your lot number(s) or landowner-of-record name. Anonymous comments will be considered, but do not carry the same weight as identified comments. Please also identify the summary table change number(s) you are commenting on to help us process your input. The Governing Documents Committee will carefully consider your comments and will present a report on your feedback and the committee's recommended revisions to the Board for approval.

Upon Board approval, the revised Restated Bylaws will be sent to Landowners for formal voting. The Governing Documents Committee will announce a special information session during the voting period for Members to discuss and ask their questions about the proposed changes.

Thank you for participating in revising the Restated 2023 GLA Bylaws.

**Glastonbury Board of Directors and Governing Documents Committee**

The GLA's Official website: [www.glamontana.org](http://www.glamontana.org)  
PO Box 312, Emigrant, Montana 59027-0312  
(406) 451-0033 • [info@glamontana.org](mailto:info@glamontana.org)



## SUMMARY OF PROPOSED CHANGES IN THE RESTATED BYLAWS

The GLA Bylaws were originally adopted in 1997, with limited amendments in 1998 and 2014, and an extensive revision in 2020. The 2023 Governing Documents committee identified several revisions to correct typos, increase the Board's flexibility in implementing elections, and conform to the Montana nonprofit law. Since the changes are limited to a few sections, the attached document includes only the edited sections of the Bylaws, showing all the proposed edits.

Change	Section	Summary
<b>1</b>	Additional Flexibility in Implementing Votes and Board Elections	The traditional GLA voting method has been very labor-intensive, demanding at least 14 volunteers who undergo hours of training and devote an entire day to the election. In 2022, the custodian pendente lite oversaw the election, using (1) a simplified method of written-ballot-only voting, which was (2) not linked to the Annual Meeting. He also (3) had the GLA's accounting firm, a neutral third-party, screen the ballots' eligibility and count the votes. The accompanying Bylaws text provides this flexibility through amendments in the following sections:
<b>1a</b>	Article V. B. Annual Meetings (also in Article V. G. 2., Article VI. C. & D.1.)	Edits here delink the annual election of directors from the annual in-person meeting. Voting could occur at the meeting but could be independent of the meeting, yet presumably held at around the same time. This will permit voting by written-ballot only. The inserted statement about what the President and Treasurer shall do at the meeting is taken directly from Montana Law (MCA 35-2-526).
<b>1b</b>	Article V. F. Voting	The edits allow for written-ballot-only voting. Edits in section 5. clarify that the Board has the additional flexibility it used previously when implementing votes on 1997 Covenant and 2007 Master Plan amendments. Many Members, often fewer than half, do not vote at all. The Board may continue the voting period and contact Members who have not yet voted so the stringent threshold can be reached
<b>1c</b>	Article VI. D. 5.	Delineates the Board's broad authority to implement elections and votes, including their timing, duration, mode (in-person vs. written-ballot-only) and administration (by Member volunteers or by a neutral third party).
<b>2</b>	Clarifications	Edits in various sections clarify but do not alter existing procedures.
<b>2a</b>	Article V.F. Voting	Edits in section 4. clarify that the 51% standard applies beyond votes at a meeting, but that elections of directors are decided by a 'most votes' standard and that votes concerning the Covenants and Master Plan amendments apply a more stringent threshold.
<b>2b</b>	Article V. G. 2. Proxy	The changes here clarify that GLA only allows proxy appointees to vote in-person when authorized in writing by a Member who cannot attend to vote. No proxy votes have ever been permitted in absentee ballots or written-ballot-only votes.
<b>2c</b>	Article VI. D. 2.	Clarifies that a full term is an elected 2-year term and that a Director might serve a partial term for any reason.
<b>2d</b>	Article VI. D. 4.	Ensures clear criteria for considering a ballot to be "voted" under in-person voting and during written-ballot-only voting.
<b>3</b>	Article V. A. Place of Meeting	Members have been able to attend Board and committee meetings virtually for some time now and entire meetings have been virtual at times. The edits here make these provisions explicit and allow them to apply to Members' meetings. This conforms to MCA 35-2-525.
<b>4</b>	Article V. G. 1. Legal Representative (Also in Article VI.C. & D.)	Corrects a loophole in GLA Bylaws and will now conform to Montana Law, by requiring that a legal representative be a fiduciary with legal authority comparable to that of the owner to act for the benefit of the property. The Bylaws grant broad powers to a legal representative, not only having authority to vote for the Member on any matters but also authorizing them to be elected to the Board. MCA 35-2-542 authorizes a mutual benefit corporation to accept the legal representative if they provide evidence of fiduciary status.

<b>Change</b>	<b>Section</b>	<b>Summary</b>
<b>5</b>	Article VI. D. 6.	When an election results in a tie, implementing a run-off election is costly and time-consuming, resulting in delays in seating the new Board Director. The edits here permit the Board to break the tie via a coin toss if acceptable, and specifies that if a run-off election is necessary, it should be by the simpler written-ballot-only method.
<b>6</b>	Article X. E. Vacancies	Whereas the current Bylaws require that vacancies in the office of Ombudsman be filled by Members in a special election, the edits here allow the vacancies to be filled in the same manner as vacancies on the Board.
<b>7</b>	Article X. F. Removal of Ombudsman	Keeps the standard for removing an Ombudsman who was elected by Members but allows the Board to remove an Ombudsman the Board appointed to fill a vacancy.
<b>8</b>	Various sections	The revisions correct typos, punctuation, grammatical errors, or delete extraneous or redundant phrases, and otherwise simplify the text: Article IV. C. Nonliability of Members (no hyphen) Article V. D. Notice of Meeting (the GLA does not send fax notices) Article V. F. Voting (extraneous phrase about walk-in payments) Article VI. N. Nonliability of Directors (no hyphen) Article VII. I. Nonliability of Officers (no hyphen)

On April 17, 2023, the Governing Documents approved sending this list to the Board, asking that the Board obtain attorney feedback on the proposed changes.

IN THE SUPREME COURT  
OF THE STATE OF MONTANA

Supreme Court No. DA 20-0214

CRAIG TRACTS HOMEOWNERS'  
ASSOCIATION, INC., TARA J.  
CHAPMAN & MATTHEW B. LOSEY,  
DONALD C. and BEVERLY A. FRIEND,  
ROBERT J. & ANDREA E. MARICICH  
FAMILY TRUST, MICKELSON  
INVESTMENTS, LLC, SALLIE A. LOSEY,  
HEMINGWAY PATRICK & CAROL T.  
REVOCABLE LIVING TRUST,

Plaintiff and Appellants,

v.

BROWN DRAKE, LLC,

Defendant and Appellee,

***APPELLEE'S ANSWER BRIEF***

On Appeal from the First Judicial District Court, Lewis & Clark County, the  
Honorable Judge Michael F. McMahon Presiding  
State of Montana, District Court Cause No. BDV-2018-1622

Appearances:

Reid J. Perkins, Esq.  
Worden Thane P.C.  
111 North Higgins, Suite 600  
P.O. Box 4747  
Missoula, Montana 59806  
Ph: (406) 721-3400  
Fax: (406) 721-6985  
[rperkins@wordenthane.com](mailto:rperkins@wordenthane.com)  
*For Appellee Brown Drake*

Dave Dalthorp  
Scott Svee  
JACKSON, MURDO & GRANT, P.C.  
203 North Ewing  
Helena, MT 59601  
Ph: (406) 513-1120  
[dalthorp@jmgm.com](mailto:dalthorp@jmgm.com)  
[ssvee@jmgm.com](mailto:ssvee@jmgm.com)  
*For Appellants Craig Tracts et. al.*

Filed \_\_\_\_\_, 2020  
\_\_\_\_\_, Clerk

TABLE OF CONTENTS

ISSUES PRESENTED. . . . . 1

STATEMENT OF THE CASE. . . . . 2

FACTUAL BACKGROUND. . . . . 2

STANDARD OF REVIEW. . . . . 6

SUMMARY OF ARGUMENT. . . . . 6

ARGUMENT. . . . . 9

A. The District Court Was Correct When It Held that the Guests' Use of the Property as a Dwelling Complied With the Amended Covenants' Requirement to Use the Property for Residential Purposes.. . . . 9

    1. *If the Amended Covenants are ambiguous (which they are not), then the ambiguity would have to be decided in favor of Brown Drake because covenants must be read in favor of the least restrictions possible...* . . . . . 12

    2. *Cases from other jurisdictions are in accord with the District Court's holding that short-term rentals do not violate the Amended Covenants.* . . . . . 19

    3. *The Montana Legislature specifically contemplated that short-term rentals like those found here could be residential use..* . . . . 24

CONCLUSION. . . . . 29

CERTIFICATE OF COMPLIANCE.. . . . 34

CERTIFICATE OF SERVICE. . . . . 35

INDEX TO APPENDIX. . . . . 36

    APPENDIX 1 - Amended Covenants (Ex. B to Def.'s SJ Br.)

    APPENDIX 2 - Order on Summary Judgment

    APPENDIX 3 - Original Covenants (Ex. A to Def.'s SJ Br.)

APPENDIX 4 - Affidavit of Bratvold (Ex. C to Def.'s SJ Br.)

APPENDIX 5 - Affidavit of Lappier (Ex. D to Def.'s SJ Br.)

APPENDIX 6 - *Santa Monica Beach Prop. Owners Ass'n, Inc. v. Acord.*  
(Ex. E to Def.'s SJ Br.)

## TABLE OF AUTHORITIES

### MONTANA STATE CASES

<i>American Music Co. v. Higbee</i> 324 Mont. 348, ¶ 17, 103 P.3d 518 (2004).....	13
<i>City of Deer Lodge v. Fox</i> 2017 MT 129, ¶ 8, 387 Mont. 478, 395 P.3d 506.....	34
<i>Conagra, Inc. v. Nierenberg</i> (2000) 301 Mont. 55, ¶ 31, 7 P.3d. 369, ¶ 31.....	8
<i>Czajkowski v. Meyers</i> 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91.....	2, 7, 10, 14, 17
<i>Empire Development Co. v. Johnson</i> 236 Mont. 433, 770 P.2d 525 (1998).....	13
<i>Houden v. Todd</i> 2009 WL 10243654 (Mont. Dist., Aug. 12, 2009), (aff'd in relevant part by 2014 MT 113, 375 Mont. 1, 324 P.3d 1157) . . . .	32
<i>Kuhr v. City of Billings</i> 2007 MT 201, ¶ 18, 338 Mont. 402, ¶ 18, 168 P.3d 615, ¶ 18.. . . . .	14, 17
<i>Mecca v. Farmers Ins. Exchange</i> (2005) 329 Mont. 73, 122 P.3d 1190, ¶ 17 . . . . .	14
<i>Micklon v. Dudley</i> 2007 MT 265, ¶11, 339 Mont. 373, 170 P.3d 960. . . . .	7
<i>Nordwick v. Berg</i> (1986), 223 Mont. 337, 342, 725 P.2d 1195, 1199.....	8
<i>Tipton v. Bennett</i> 281 Mont. 379, 382, 934 P.2d 203, 204. . . . .	9-10, 12
<i>Wild v. Fregein Construction</i> (2003), 315 Mont. 425, 63 P.3d 855, ¶31. . . . .	31
<i>Wurl v. Polson School Dist. No. 23</i> 2006 MT 8, ¶ 17, 330 Mont. 282, ¶ 17, 127 P.3d 436, ¶ 17.....	15

## MONTANA STATE STATUTES

<i>Mont. Code Ann. § 1-4-101</i> .....	8
<i>Mont. Code Ann. § 28-3-201</i> .....	7-8
<i>Mont. Code Ann. § 28-3-501</i> . . . . .	7, 10
<i>Mont. Code Ann. §§ 50-51-101 et. seq.</i> .....	5, 25-26
<i>Mont. Code Ann. § 70-17-901</i> .....	27, 33

## OUT-OF-STATE CASES

<i>Estates at Desert Ridge Trails Homeowners' Ass'n.</i> 300 P.3d 736, 744 (N.M. App. Ct. 2013). . . . .	32
<i>Santa Monica Beach Prop. Owners Ass'n, Inc. v. Acord</i> 219 So.3d 111, 114 (Fla. Dist. Ct. App. 2017). . . . .	21-22
<i>Wilkinson v. Chiwawa Communities Ass'n.</i> 180 Wash. 2d 241, 257, 327, P.3d 614, 622-23 (2014). . . . .	32

IN THE SUPREME COURT  
OF THE STATE OF MONTANA

Supreme Court No. DA 20-0214

---

**ISSUES PRESENTED**

*Was the District Court correct when it held that renting a property to short-term residential tenants who use the property as a dwelling complied with real property covenants which provide that the property "shall be used for residential purposes only"?*

**STATEMENT OF THE CASE**

This case involves the interpretation of real property covenants. The Amended Covenants at issue provide that property may only be "used for residential purposes." *Amend. Covenants, Appendix 1*. Brown Drake LLC's ("Brown Drake") owners use the property in question as their own vacation home for part of the year and lease the property to short-term residential tenants (including friends and family) on and off for the remainder of the year. Both the owners of Brown Drake and the tenants use the property in an identical way, as a residence or dwelling. The use of the house remains the same whether it is one of the families who own Brown Drake using the property or a tenant using the property. Accordingly, the district court correctly held that the *use* is residential and therefore not in violation of the Amended Covenants.

At the district court level, there was no genuine dispute about the actual use Brown Drake is making of the property. There was no genuine dispute over the material facts. Rather, the parties have a different opinion as to how the Amended Covenants should be interpreted. In a nutshell, the Appellants Craig Tracts

Homeowners' Association, Inc. et. al. ("HOA") interpret the Amended Covenants to limit *who* may use the property as a dwelling. *See e.g. Opening Br., p. 6* (stating the HOA has no objection to the LLC's owners using the property, but that they object to the same type of use from short-term tenants). Brown Drake, on the other hand, interprets the Amended Covenants as controlling the character of the actual *use*.

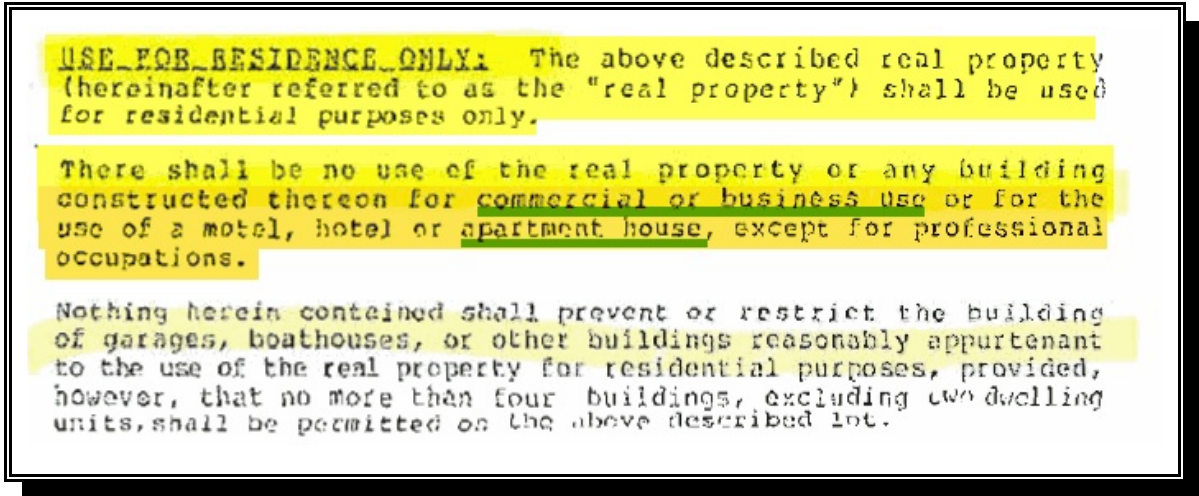
Montana law requires that restrictive covenants be strictly construed to limit any restrictions as much as possible. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91. After the parties filed cross-motions for summary judgment, the District Court weighed the issue in light of the appropriate legal standards. The District Court agreed that renting the property to residential tenants who use the property as a residence is not a violation of the Amended Covenants. The District Court correctly held that "...the restrictive covenant at issue does not prohibit [Brown Drake] from renting the Lodge to guests for residential purposes." *See SJ Order, p. 9, ll. 18-19, Appendix 2*. Through the present appeal, the HOA is now appealing the District Court's decision. The District Court, however, reached the correct conclusion. Granting Brown Drake's summary judgment motion was appropriate. Therefore, the District Court's decision should be affirmed.

### **FACTUAL BACKGROUND**

1. On July 13, 1983, a document titled "Covenants" was recorded with the Clerk and Recorder. *See Original Covenants, p. 1, Appendix 3*. These covenants are referred to in this brief as the "Original Covenants" because these

covenants were eventually amended.

2. In the Original Covenants, there was language specifically precluding "commercial uses," including "apartment house[s]" as follows:



*See Original Covenants, p. 1, Appendix 3 (emphasis added).*

3. The Original Covenants were amended on September 29, 1984. *See Amended Covenants, Appendix 1.*

4. In the Amended Covenants, the restriction on "commercial or business use" and "apartment house" language found in the first covenants was deleted, leaving only the rule that the property must be "used for residential purposes only":

*[Depiction of Amended Covenants on following page]*

**USE FOR RESIDENCE ONLY:** The above described real property (hereinafter referred to as the "real property") shall be used for residential purposes only.

Nothing herein contained shall prevent or restrict the building of garages, boathouses, or other buildings reasonably appertenant to the use of the real property for residential purposes, provided however, that no more than four buildings, excluding two dwelling units, shall be permitted on the above described lot.

No mobile homes or trailer homes will be allowed except for double wides that are set up on permanent foundations and painted in earth colors.

All homes shall contain a minimum of 800 square feet.

*See Amended Covenants, p. 2 (emphasis added).*

5. At the time Brown Drake purchased its property, Brown Drake was told that at least one other home in the area covered by the Amended Covenants had previously been rented out to residential tenants at various times. *See Aff. of Bratvold* ¶ 6, *Appendix 4*. Brown Drake purchased its own property with the expectation of using the property in the same manner (as a part-time rental) as previous owners of other properties had. *Id.* Brown Drake expected its right to use its property in that manner to remain in effect during its ownership. *See Aff. of Bratvold*, ¶ 7.

6. The Trout Shop previously acted as the property manager for another property that is also subject to the same Amended Covenants that are at issue in this suit. The property is the property currently owned by Plaintiff Maricich Family Trust. *See Aff. of Bratvold*, ¶ 8; *Aff. of Lappier*, ¶ 4-8, *Appendix 5*.

7. The Maricich Family Trust also allows its property to be used for casting clinics put on by Headhunters, a local fly fishing shop. *See Aff. of*

*Bratvold*, ¶ 9.

8. For the majority of the year (approximately eight or nine months out of the year), the members of Brown Drake stay at the property, on and off, as a vacation home. *See Aff. of Bratvold*, ¶ 10.

9. When Brown Drake's members are not staying at the property, Brown Drake rents the property to tenants, but only on a short term basis. *See Aff. of Bratvold*, ¶ 11. Brown Drake does not enter into long term leases with tenants. *Id.*

10. M.C.A. § 50-51-101 et. seq. requires "private home[s]" that are "rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis" to obtain a license through the state of Montana. Brown Drake's property is a private home that is, during certain times of the year, leased on a short-term basis. Accordingly, Brown Drake has complied with the law and obtained the necessary license, allowing it to legally rent its private residence out to guests on a daily or weekly basis. *See Aff. of Bratvold*, ¶ 12.

11. Brown Drake rents the residence to short-term tenants. *See Aff. of Bratvold*, ¶ 13. A local fly fishing shop advertises the availability of the residence to be rented through its website. *Id.* Brown Drake also has a FaceBook page and website where prospective tenants can see photos of the property and have questions answered. *Id.*

12. Both Brown Drake's owners and Brown Drake's tenants use the residence to do some or all of the following, depending on each persons'

individual needs at the time:

- a. bath, shower, and groom;
- b. dress;
- c. sleep;
- d. cook or prepare meals;
- e. eat;
- f. clean up after meals;
- g. talk on the phone;
- h. watch television for entertainment;
- I. rear children;
- j. communicate;
- k. enjoying the scenery;
- l. play;
- m. use the bathroom;
- n. maintain hygiene;
- o. sit and relax;
- p. walk;
- q. entertain;
- r. browse the internet and social media;
- s. read;
- t. shelter themselves; and
- q. couple.

*See Aff. of Bratvold, ¶ 14.* Brown Drake's owners use the property themselves as a dwelling. *Id.* The tenants also use the property as a dwelling. *Id.*

13. Everyone who stays at the residence, whether they be tenants, guests, friends, family, or the owners of Brown Drake all use the residence as a dwelling.

*See Aff. of Bratvold, ¶ 15.*

14. Brown Drake does not operate a bed and breakfast nor does it provide services (such as guide services, rental equipment, etc.). *See Aff. of Bratvold, ¶ 16.*

## STANDARD OF REVIEW

Brown Drake agrees with the HOA's statement of the standard of review. A district court's interpretation of a restrictive covenant is a conclusion of law which the Montana Supreme Court therefore reviews to determine whether the court's conclusion is correct. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91; *Micklon v. Dudley*, 2007 MT 265, ¶11, 339 Mont. 373, 170 P.3d 960. This Court's review of the district court's summary judgment order is *de novo*.

## SUMMARY OF ARGUMENT

Brown Drake's use of the property complies with the Amended Covenant's directive that the "property shall be used for residential purposes only." *Amend. Covenants, p. 2, Appendix 2*. The plain language of the Amended Covenants allows the property to be used as a dwelling, whether it be for short-term guests or the owners of the LLC that owns the property. *Id.* There is no explicit restriction against short-term rentals nor rentals of any kind. *Id.* Montana law requires that restrictive covenants be strictly construed to limit any restrictions as much as possible. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91. General rules of contract interpretation apply to restrictive covenants. *Id.* Where a provision is clear and unambiguous, the court must apply the language as written. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91. The language of a covenant is to be understood in its ordinary and popular sense. *Mont. Code Ann. § 28-3-501*. Real property covenants are treated like contracts. It

is well settled that when there is a written contract, it is the duty of the Court to enforce the terms of that written contract and "not to insert what has been omitted or to omit what has been inserted." *See Mont. Code Ann.* § 1-4-101 (2019); *Nordwick v. Berg* (1986), 223 Mont. 337, 342, 725 P.2d 1195, 1199 (citations omitted); *Conagra, Inc. v. Nierenberg* (2000), 301 Mont. 55, ¶ 31, 7 P.3d. 369, ¶ 31; and *Mont. Code Ann.* § 28-3-201 (2019).

In this case, the language of the Amended Covenants plainly allows for use as a residence. The Amended Covenants specify that the property be "used for residential purposes only" as follows:

**USE FOR RESIDENCE ONLY:** The above described real property (hereinafter referred to as the "real property") shall be used for residential purposes only.

Nothing herein contained shall prevent or restrict the building of garages, boathouses, or other buildings reasonably appertenant to the use of the real property for residential purposes, provided however, that no more than four buildings, excluding two dwelling units, shall be permitted on the above described lot.

No mobile homes or trailer homes will be allowed except for double wides that are set up on permanent foundations and painted in earth colors.

All homes shall contain a minimum of 800 square feet.

*See Amended Covenants, p. 2 (emphasis added).* The covenant language specifically references "used" within the provision, thereby clearly indicating that the proper focus is on the actual "use[]" of the property. *Id.* It is the actual "use[]" that the Court must compare to the directive in the covenant.

"Residential" has been defined by the Montana Supreme Court as meaning "used as a residence or by residents." *Tipton v. Bennett*, 281 Mont. 379, 382, 934 P.2d 203, 204. "Residence", in turn, means "the act or fact of dwelling in a place for some time." *Id.*

Properly focusing on the type of use, it is clear that Brown Drake is using its property as a dwelling. The owners of the LLC use the house at issue as a dwelling. *See Facts*, ¶¶ 8-14. The renters use the house as a dwelling. *Id.* The only use of the house is as a dwelling. *Id.* Everyone is using the property in the same way; everyone is using the property as a residence.

The language of the Amended Covenants is simple and clear. The use complies with the Amended Covenants. Based on the plain language alone understood in its popular sense and strictly construing the Amended Covenants in favor of free use, Brown Drake is simply not violating the Amended Covenants. Granting summary judgment in Brown Drake's favor was appropriate. Thus, the District Court made the correct decision and its Summary Judgment Order should be affirmed.

## **ARGUMENT**

The proper focus is on the *use* that is made of the property. The Amended Covenants provide that the property "shall be used for residential purposes only." *Amend. Covenants, Appendix 1*. The Amended Covenants do not specify who must use the property as a residence nor the length of time the use may occur. In this

case, no matter who is using the property and no matter how long the use is for, the use is as a dwelling. The use of the home is as a residence. Accordingly, the District Court correctly held that the residential use complied with the Amended Covenants. Therefore, the District Court's decision should be affirmed.

**A. The District Court Was Correct When It Held that the Guests' Use of the Property as a Dwelling Complied With the Amended Covenants' Requirement to Use the Property for Residential Purposes.**

Everyone who uses the house in question uses it as a dwelling, which use complies with the Amended Covenants. Where a provision is clear and unambiguous, the court must apply the language as written. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91. When the language of a covenant is clear and explicit, that language will govern the interpretation of the covenants as a whole. *Tipton v. Bennett*, 281 Mont. 379, 381-82 (1997). The language of a covenant is to be understood in its ordinary and popular sense. *Mont. Code Ann. § 28-3-501*.

In this case, the language plainly allows for use as a residence. The Amended Covenants specify that the property be "used for residential purposes only" as follows:

*[Depiction of Amended Covenants on following page]*

**USE FOR RESIDENCE ONLY:** The above described real property (hereinafter referred to as the "real property") shall be used for residential purposes only.

Nothing herein contained shall prevent or restrict the building of garages, boathouses, or other buildings reasonably appurtenant to the use of the real property for residential purposes, provided however, that no more than four buildings, excluding two dwelling units, shall be permitted on the above described lot.

No mobile homes or trailer homes will be allowed except for double wides that are set up on permanent foundations and painted in earth colors.

All homes shall contain a minimum of 800 square feet.

See *Amended Covenants, p. 2 (emphasis added)*. The language plainly allows for the property to be used as a residence. *Id.*

The language does *not* preclude tenants of any kind. *Id.* The language does *not* specify that tenants must rent for 30 days or more at a time. *Id.* Everyone subject to the covenants may allow friends, family, guests, tenants, etc. to use their property, so long as the use is as a residence. For example, the language does *not* say that the Maricich Family Trust (one of the Plaintiff/Appellants who is a legal entity and therefore cannot use the property itself except through agents, guests, etc.) may not let Mr. Maricich family – or friends of the family – use its property. *Id.* The language does *not* say that only the owner(s) (or principal of an entity owner such as a member of an LLC or a trustee of a trust like the Appellant Maricich Family Trust or the Hemingway Trust) may use the property. *Id.* Anyone may use the properties covered by this covenant so long as the use is residential.

*Id.* There is simply no restriction on the length of use required nor how the user is named/characterized. *Id.*

Turning to the actual use of the Brown Drake property, the use is residential. Both the owners and tenants are using the property as a residence when they are staying there. "Residential" has been defined by the Montana Supreme Court as meaning "used as a residence or by residents." *Tipton v. Bennett*, 281 Mont. 379, 382, 934 P.2d 203, 204. "Residence", in turn, means "the act or fact of dwelling in a place for some time." *Id.*

Properly focusing on the *type of use*, it is clear that the use of the property is as a dwelling. The LLC owners, friends, family, and guests use the house as a dwelling. *See Facts*, ¶¶ 8-14. The renters similarly use the house as a dwelling. *Id.* The only use of the house is as a dwelling. *Id.* Everyone is using the property as a residence when they are using it because that is the purpose of the home.

The language of the Amended Covenants is simple and clear. The use complies with the Amended Covenants. Based on the plain language alone understood in its popular sense and strictly construing the Amended Covenants in favor of free use, the District Court was correct when it held that Brown Drake's use complied with the Amended Covenants. Brown Drake is simply not violating the Amended Covenants. That alone justifies granting Brown Drake summary judgment in its favor.

- 1. If the Amended Covenants are ambiguous (which they are not), then the ambiguity would have to be decided in favor of Brown Drake because covenants must be read in favor of the least restrictions possible.***

In order for the HOA Appellants to prevail, they must first establish that their interpretation of the Amended Covenants creates an ambiguity, and then establish that their interpretation should be adopted by this Court. The District Court correctly held that there is no ambiguity in the Amended Covenants, but even if there were an ambiguity the end result would necessarily be the same because any ambiguity must be resolved in favor of not restricting use. In other words, even if the Court were to (for the sake of argument) explore what would hypothetically happen if there were an ambiguity, the result would be the same because ambiguities in covenants must be read in favor of free use of the property. Restrictions must be read to be as limited as possible, not read as broadly as possible.

To be clear, Brown Drake believes the District Court was correct when it held that there is no ambiguity. When the language of a contract is clear, unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply the language as written. *American Music Co. v. Higbee*, 324 Mont. 348, ¶ 17, 103 P.3d 518 (2004); *Mont. Code Ann.* § 28–3–303. When the language of the contract is not ambiguous a resort to parol evidence is not appropriate. *Empire Development Co. v. Johnson*, 236 Mont. 433, 770 P.2d 525

(1998). It is only if the language is subject to two different reasonable interpretations that the Court may look to parol or extrinsic evidence. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91 citing *Kuhr v. City of Billings*, 2007 MT 201, ¶ 18, 338 Mont. 402, ¶ 18, 168 P.3d 615, ¶ 18.

In this case, the Amended Covenants are not ambiguous. "An ambiguity exists where the language of the contract [covenants], as a whole, could reasonably be subject to two different meanings." *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91 citing *Kuhr v. City of Billings*, 2007 MT 201, ¶ 18, 338 Mont. 402, ¶ 18, 168 P.3d 615, ¶ 18; and *Mecca v. Farmers Ins. Exchange*, (2005), 329 Mont. 73, 122 P.3d 1190, ¶ 17 (emphasis added). The determination of whether an ambiguity exists in a restrictive covenant, as in a contract, is a question of law for a court to determine. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91.

The mere fact that the parties disagree as to the meaning of a covenant provision does not necessarily, in and of itself, create an ambiguity. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91 citing *Kuhr v. City of Billings*, 2007 MT 201, ¶ 18, 338 Mont. 402, ¶ 18, 168 P.3d 615, ¶ 18. It is well settled that "a conclusion of ambiguity is not compelled by the fact that the parties to a document, or their attorneys, have or suggest opposing interpretations of a contract, or even disagree as to whether the contract is reasonably open to just one interpretation." *Id.*, citing 11 *Williston on Contracts*, § 30.4, at 51-54 (4<sup>th</sup> ed.,

West 1999). Mere disagreement between the parties as to the interpretation of a written instrument does not automatically create an ambiguity. *Wurl v. Polson School Dist. No. 23*, 2006 MT 8, ¶ 17, 330 Mont. 282, ¶ 17, 127 P.3d 436, ¶ 17. Rather, the actual language must support two possible meanings.

Brown Drake does not believe there is an actual ambiguity because the language is only subject to one reasonable interpretation. Residential use means the property can be used as a residence. The HOA, however, is arguing that only certain categories of people may use the property as a residence. For example, the first sentence of Appellants' Argument section in its brief states that – under the HOA's interpretation of the Amended Covenants – that Brown Drake's owners (i.e. the members of the LLC) may use the property as a residence, but the second sentence goes on to argue that the same exact residential use<sup>1</sup> by anyone else

---

<sup>1</sup> There is no genuine dispute that the renters and Brown Drake's owners both use the property as a residence when they are staying at the property. In its opening summary judgment brief at the district court level, Brown Drake specifically listed how the property was used (i.e. for sleeping, bathing, cooking, etc.) and specifically stated that the owners' use was identical to the renters' use. *See SJ St. of Facts*. The HOA presented no evidence contradicting that both the owners and the renters made the same physical use of the property. Similarly, in its Counterclaim Brown Drake alleged that the renters' use was residential, just as Brown Drake's owners' use was residential. *See Brown Drake, CC*, ¶¶ 2-5. The HOA group answered that they did not have sufficient information to contradict that allegation. *Appellant Answ. to CC*, ¶ 5. It was (and is) undisputed that the owners and other guests/renters all make the same use of the property (i.e. as a dwelling0).

allegedly violates the Amended Covenants. *See Opening Br., p. 6.* The use is the same, but the HOA draws a false distinction between users.

The HOA's attempted distinction between users is not actually found within the Amended Covenants. *See Amend. Covenants, Appendix 1.* The HOA's attempt to create a distinction where none exists does not create an ambiguity because the distinction is not actually found within the language of the document. Put another way, the HOA is reading into the Amended Covenants a restriction on *who* can use the property that is simply not found within the actual language of the Amended Covenants. Accordingly, the HOA is attempting to create the illusion of an ambiguity by reading language into the Amended Covenants that does not exist.

Looking at it from a different angle, the HOA is raising arguments based on *who* is using the property, not the *type of use*. As was discussed in the first section of this brief, the Amended Covenants address the *type of use* but are actually silent on the category of user. The Amended Covenants have no actual restriction on *who* uses the property, nor on the length of use. Put another way, under the language of the Amended Covenants, the focus is on the *nature of the use*, not the category or description of the user. The HOA's focus, however, is on *who* is using the property, not the *type of use*. Thus, the HOA is trying to create a false ambiguity by reading a restriction (i.e. *who* can use the property) into the Amended Covenants that does not actually exist. Accordingly, although Brown

Drake and the HOA have a disagreement, there is no actual ambiguity relative to the language in the Amended Covenants.

For the sake of argument, however, even if there were an ambiguity summary judgment in favor of Brown Drake would have remained appropriate. Brown Drake would prevail either way because ambiguities in covenants are resolved in favor of allowing free use of property. *Czajkowski v. Meyers*, 2007 MT 292, ¶ 21, 339 Mont. 503, 172 P.3d 91 *citing* *Kuhr v. City of Billings*, 2007 MT 201, ¶ 18, 338 Mont. 402, ¶ 18, 168 P.3d 615, ¶ 18. As a result, if there is somehow an ambiguity (which there is not), then the ambiguity must be resolved in favor of the least restrictive interpretation. *Id.*

Brown Drake's interpretation is the least restrictive. Because the least restrictive interpretation must prevail, the HOA group simply contending that they have a different interpretation of the covenants is not good enough for it to prevail in this case. Thus, even if the District Court had incorrectly found there was an ambiguity (which there is not), the end result would have necessarily been the same.

Moreover, even if there is an ambiguity (which there is not) the Court would then have to look to extrinsic evidence of intent. The extrinsic evidence in this case establishes that the covenants were specifically amended to remove the "commercial and business" restriction, implying that commercial and business income is allowed so long as the use is residential. *C.f. Original Covenants with*

*Amended Covenants.* In the Original Covenants, there was also language specifically precluding "commercial uses," including "apartment houses" as follows:

USE FOR RESIDENCE ONLY: The above described real property (hereinafter referred to as the "real property") shall be used for residential purposes only.

There shall be no use of the real property or any building constructed thereon for commercial or business use or for the use of a motel, hotel or apartment house, except for professional occupations.

Nothing herein contained shall prevent or restrict the building of garages, boathouses, or other buildings reasonably appurtenant to the use of the real property for residential purposes, provided, however, that no more than four buildings, excluding two dwelling units, shall be permitted on the above described lot.

*See Original Covenants, Appendix 3, p. 1 (emphasis added).* This "commercial or business use" and "apartment house" language, however, was specifically and intentionally removed in the current version of the Amended Covenants. *C.f. Id. and Amended Covenants, Appendix 1.*

The removal of this "commercial or business use" language, (along with the "residential use" language surviving the amendment), can only support the conclusion that the intent of the amendment was that commercial or business income from rentals being allowed so long as the *use* of the property remains as a residence. The owners at the time of the amendment would not have removed "commercial or business use" restrictions as well as the "apartment house" restriction if they intended to preclude all residential rentals. Because the

amendment did not insert a time limit on the rentals, the extrinsic evidence also supports that short-term rentals were contemplated as being allowed (or at least not contemplated as being restricted).

In addition, prior property owners in this subdivision actually rented their properties on a short-term basis. Attached to Brown Drake's Brief in Support of its Motion for Summary Judgment as Exhibits C and D were affidavits from Cindi Bratvold and Gerald Lappier. *See Aff. of Bratvold, Appendix 4; and Aff. of Lappier, Appendix 5.* Ms. Bratvold testified that the Marcich Family Trust property was previously owned by the former President of the Craig Tracts Homeowners Association, Inc. That property was rented out by the former President of the HOA. *See Aff. of Bratvold, ¶¶ 6-8, Brown Drake SJ Br., Exhibit C.* Gerry Lappier, the owner of the company that acted as the booking agent for those rentals, similarly confirmed that the Maricich property was rented to short term tenants for years. Specifically, Mr. Lappier testified that for approximately eight (8) years, the former owner of the Maricich Family Trust property rented the property to short-term tenants (usually 3-5 days, according to Mr. Lappier). *See Aff. of Lappier, ¶¶ 2-8.*

Reading everything together and not adding words that are not actually found within the Amended Covenants, renting to short-term tenants is allowed, so long as the tenants' use of the property remains as a residence or dwelling. Not only does the current language not restrict residential rental use, the only rational

interpretation is that rental use is allowed so long as the use of the property remains as a residential rental. The extrinsic evidence also supports Brown Drake's interpretation of the Amended Covenants. Thus, even if there were an ambiguity (which there is not), the fact would remain that Brown Drake would still be entitled to summary judgment in its favor. The District Court's decision should be affirmed.

**2. *Cases from other jurisdictions are in accord with the District Court's holding that short-term rentals do not violate the Amended Covenants.***

As an initial matter, Brown Drake recognizes that every covenant case is somewhat unique because every set of covenants are unique. Because the interpretation of covenants depends on the specific language found in those specific covenants, holdings in other cases that interpret language found in other covenants with different language may not be particularly useful. As such, prior cases often only have persuasive value and, even then, only where the language is identical (or nearly identical). Any case without similar "residential purposes" language and that does not have the same history of commercial restrictions being removed may not be persuasive. As a result, Brown Drake is primarily relying on the language in these Amended Covenants, interpreted under Montana law.

Having said that, it is worth noting that other courts that have looked at the broad underlying issue have held in Brown Drake's favor. For example, in *Santa Monica Beach Prop. Owners Ass'n, Inc. v. Acord*, a district court of appeals for

Florida relatively recently held that short term rentals comply with a "residential use" covenant when renters are using the property for ordinary living purposes such as sleeping and eating, regardless of the duration of rental period. 219 So.3d 111, 114 (Fla. Dist. Ct. App. 2017), *Appendix 6*. In *Acord*, just as in the present case, a property owners association brought suit against three property owners alleging that the three owners were in violation of restrictive covenants by using their properties as short-term vacation rentals while advertising on a website. *Id.* In the *Acord* case, the covenants not only restricted the use of the properties to "residential purposes", the covenants also specifically precluded "business purposes" as follows:

*[Depiction on following page]*

SANTA MONICA BEACH PROPERTY OWNERS ASSOCIATION,  
INCORPORATED, Joe Bailey, Lew James, Cindy Dood, Janet Dick–Grace,  
Adrian Holman, Joyce Hoskins, John Hunter, Mark Jamison, Barbara  
Ramlow, Gary Salter, Steve Sanders, and Bob Whitson, Appellants,

v.

David ACORD and Wife, Virginia Acord, and William C. Alford, Appellees.

CASE NO. 1D16–4782

Opinion filed April 28, 2017

...

#### **Factual and Procedural Background**

Appellees own two properties<sup>1</sup> in the Santa Monica Beach subdivision in Bay County. The properties are subject to restrictive covenants which provide in pertinent part:

**\*113** Said land shall be used only for residential purposes, and not more than one detached single family dwelling house and the usual outhouses thereof, such as garage, servants' house and the like, shall be allowed to occupy any residential lot as platted at any one time; nor shall any building on said land be used as a hospital, tenement house, sanitarium, charitable institution, or for business or manufacturing purposes nor as a dance hall or other place of public assemblage.

(emphasis added).

*Santa Monica Beach Prop. Owners Ass'n, Inc. v. Acord*, 219 So.3d 111, 113 (Fla. Dist. Ct. App. 2017), *Appendix 6*. Thus, the covenants in the *Acord* case provided

even stronger language against short-term rentals than the Amended Covenants provide in the present case.

In the *Acord* case, just as the HOA did in the present case, the property owners' association sent a demand letter arguing that the rental of the properties as vacation rentals by owner (VRBO) violated the restrictive covenants. *Id.* Just as in the present case, in *Acord* the association cited to the advertisement of the properties on a website, argued that the owners had to pay sales and local bed taxes on the rentals, and that the *Acords* had obtained a license to operate the property as a transient public lodging establishment under the name "Acord Rental." *Id.* Just as in the present case, in *Acord* the association contended the short-term rental use was business use. *Id.*

The *Acords* argued that "the short-term vacation rentals were residential uses—and not business uses—because the renters were using the properties for residential purposes." *Id.* In *Acord*, the *Acords* argued that the focus should be on the use, not whether the *Acords* complied with required licensing to allow for the use:

uses—because the renters were using the properties for residential purposes: "Critically, the [Association] ha[s] not alleged that the properties are being rented for any purpose other than residential use by residential tenants. ... [T]he fact that this use is residential in character, and not a commercial or 'business' use, is conclusively established by the fact that [the Association] repeatedly refer[s] to Florida's statute concerning 'public lodging,' lodging being an inherently residential use of a dwelling" (emphasis in original).

*Id.* In a nutshell, the arguments in *Acord* and the arguments being made in the present lawsuit are very similar.

Just as the District Court in the present case held in Brown Drake's favor, the district court in *Acord* held in favor of Acord, dismissing the case on a Rule 12(b)(6) motion standard, reasoning that the critical inquiry was the character of the actual use, not the duration of the tenancy:

The trial court agreed and dismissed the complaint.<sup>4</sup> The court reasoned that "[t]he critical inquiry is not the duration of the \*114 tenancy, but the character of the actual use of the property by those residing thereon." Additionally, the court explained that because the proper focus is on "the actual use which is undertaken on the property," the nature of the properties' use is not transformed from residential to business simply because the properties may be subject to a regulatory scheme that requires licensure and Appellees may earn income from the rentals. Finally, the court noted that because the restrictive covenants are silent on the issue of short-term rentals, any ambiguity as to whether that use is permitted must be resolved in favor of Appellees' free and unencumbered use of their properties.

This appeal follows.

*Id.* (emphasis added). In other words, under a nearly identical case with covenants that have very similar "residential use" language and applying the same laws as those found in Montana, the district court in *Acord* held in favor of Brown Drake's position. *Id.*

On appeal, just as Brown Drake is asking this Court to affirm the District Court, the appellate court in *Acord* affirmed the district court's holding. *Id.* In making its holding, the appellate court recognized that although this was an issue of first impression in Florida (in 2017), nearly every other court that had addressed the issue had "almost uniformly" agreed with Brown Drake's legal analysis:

The specific issue in this appeal—whether short-term vacation rentals violate restrictive covenants requiring property to be used only for residential purposes and prohibiting its use for business purposes—appears to be a matter of first impression in Florida. See generally William P. Sklar & Jerry C. Edwards, *Florida Community Associations Versus Airbnb and VRBO in Florida*, Fla. Bar. J., Feb. 2017, at 16. However, courts in a number of other states have considered the issue and those courts have almost uniformly held that short-term vacation rentals do not violate restrictive covenants nearly identical to those at issue in this case. See *Gadd v. Hensley*, — S.W.3d —, 2017 WL 1102982 (Ky. Ct. App. Mar. 24, 2017) (unpublished opinion); *Houston v. Wilson Mesa Ranch Homeowners Ass'n*, 360 P.3d 255 (Col. App. 2015); *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wash.2d 241, 327 P.3d 614 (2014) (en banc); *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 300 P.3d 736 (N.M. Ct. App. 2013); *Russell v. Donaldson*, 222 N.C.App. 702, 731 S.E.2d 535 (2012); *Slaby v. Mountain River Estates Residential Ass'n*, 100 So.3d 569 (Ala. Civ. App. 2012); *Applegate v. Colucci*, 908 N.E.2d 1214 (Ind. Ct. App. 2009); *Mason Family Trust v. DeVaney*, 146 N.M. 199, 207 P.3d 1176 (N.M. Ct. App. 2009); *Ross v. Bennett*, 148 Wash.App. 40, 203 P.3d 383 (2008); *Scott v. Walker*, 274 Va. 209, 645 S.E.2d 278 (2007); *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006); *Mullin v. Silvercreek Condo. Owner's Ass'n*, 195 S.W.3d 484 (Mo. Ct. App. 2006); *Pinehaven Planning Bd. v. Brooks*, 138 Idaho 826, 70 P.3d 664 (2003); *Yogman v. Parrott*, 325 Or. 358, 937 P.2d 1019 (1997) (en banc); *Catawba Orchard Beach Ass'n v. Basinger*, 115 Ohio App.3d 402, 685 N.E.2d 584 (1996); but see *Shields Mountain Property Owners Ass'n v. Teffeteller*, 2006 WL 408050 (Tenn. Ct. App. Feb. 22, 2006) (unpublished opinion); *Benard v. Humble*, 990 S.W.2d 929 (Tex. App.—Beaumont 1999).

*Id.* (emphasis added). The appellate court agreed with the district court's analysis that licensing and advertising changed nothing because the actual use was "residential." *Id.* The appellate court in *Acord* affirmed the dismissal. The case was not appealed further. Although this is an issue of first impression in Montana, the same reasoning as was found in the *Acord* case holds true in this case. Dismissing the present case is just as appropriate as it was in the *Acord* case. Affirming the District Court's decision is also just as appropriate. The courts in the *Acord* case got it correct as did the District Court in this case.

**3. *The Montana Legislature specifically contemplated that short-term rentals like is found here could be residential use.***

The HOA's premise – that because short-term rentals are regulated under a different law than the Landlord-Tenant Act the use cannot be residential – is flawed. The HOA seems to be arguing that because M.C.A. § 50-51-101 et. seq. requires "private home[s]" that are "rented, leased, or furnished in its entirety to

transient guests on a daily or weekly basis" to obtain a license through the state of Montana, then the use cannot be residential because the Montana Residential Landlord-Tenant Act does not apply. *Opening Br.*, §C. The fact is, however, the determinative factor in whether M.C.A. § 50-51-101 et. seq. or the Landlord-Tenant Act regulates a particular transaction is the length of the tenancy, not the character of the use. As such, which regulatory scheme applies is not determinative of whether the character of the use is residential or not residential. Residential use of a private home may be regulated under M.C.A. § 50-51-101 et. seq. if the rentals are by the day or week, or the Landlord-Tenant Act if the rentals are 30 days or more. In either case, the regulatory scheme does not change the character of the use.

A private home can be leased out for residential use and still fall under the statutory scheme set forth in M.C.A. § 50-51-101 et. seq. In fact, M.C.A. § 50-51-101 et. seq. clearly contemplates that the use may fall under this statutory scheme and still be "residential." For example, a "Bed and breakfast" (which is not what is being run in this case, but which is covered by the statutory scheme that the HOA objects to) is defined in relevant part as "a private, owner- or manager-occupied *residence* that is used as a *private residence* but in which..." *Mont. Code Ann. § 50-51-102(1)(emphasis added)*. The code sections set forth in M.C.A. § 50-51-101 et. seq. apply to private "residence[s]" on their face. Whether the Brown Drake property is regulated under M.C.A. § 50-51-101 et. seq. or the

Landlord-Tenant Act does not change the fact that the actual use is residential.

The Montana Legislature also recently passed a bill that refers to short-term rentals like those in the present case as including "residential" rentals, indicating a legislative intent that short-term rentals of homes be considered residential. In the last legislative session, the Montana Legislature passed a law preventing a Homeowners' Association from enforcing covenants to restrict short-term rentals as follows:

**Effective: May 8, 2019**

MCA 70-17-901

70-17-901. Homeowners' association restrictions--real property rights

Currentness

(1)(a) A homeowners' association may not enter into, amend, or enforce a covenant, condition, or restriction in such a way that imposes more onerous restrictions on the types of use of a member's real property than those restrictions that existed when the member acquired the member's interest in the real property, unless the member who owns the affected real property expressly agrees in writing at the time of the adoption or amendment of the covenant, condition, or restriction.

(b) When a member claims the benefit of this subsection (1), the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide the homeowners' association with the date the real property was conveyed to the member and shall pay the recording fees for the document setting forth the exception.

*Mont. Code Ann. § 70-17-901(1) (emphasis added).* This new statute specifically contemplates that the "types of use" may include renting the property for any length of time and contemplates that the use may be "residential" use, which is the exact use that Brown Drake is making of its property:

(6) As used in this section, the following definitions apply:

(a) "Homeowners' association" means:

(i) an association of all the owners of real property within a geographic area defined by physical boundaries which:

(A) is formally governed by a declaration of covenants, bylaws, or both;

(B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and

(C) may enact or enforce rules concerning the operation of the community or subdivision; or

(ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

(b) "Member" means a person that belongs to a homeowners' association and whose real property is subject to the jurisdiction of the homeowners' association.

(c) "Person" means one or more individuals or a legal or commercial entity.

(d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property governed by a homeowners' association.

(e) "Types of use" means the following lawful types of use of the real property:

(i) use for residential, agricultural, or commercial purposes, unless the use was impermissible according to the written or recorded restrictions;

(ii) the ability to rent the real property, including the land and structures on the real property, for any amount of time; and

(iii) the ability to otherwise develop the real property in accordance with applicable federal, state, and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or recorded restrictions.

*Id.* (emphasis added). Labeling use for "any amount of time" as including potential "residential...use" indicates a legislative recognition that short-term rentals are potentially "residential."

Notably, this new law also specifically states that a homeowners association may not enforce a covenant in such a way that it restricts a type of use that was allowed at the time the member acquired the property:

(5) Nothing in this section invalidates existing covenants of a homeowners' association or creates a private right of action for actions or omissions occurring before May 8, 2019. However, after May 8, 2019, unless the member has consented as provided by subsection (1), a homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the types of use of a member's real property that were allowed when the member acquired the affected real property.

*Id.* at (5) (emphasis added). At the District Court level, Brown Drake raised this new statute as potentially prohibiting the HOA from enforcing the Amended Covenants in this new way. Because the Amended Covenants do not prevent the use in this case, the argument need not be addressed further here. It is worth noting, however, that the bill was introduced because of short-term rentals and covers "residential" use.

This bill was drafted by a homeowner in Red Lodge who purchased a house to use, in part, as a Vacation Rental by Owner ("VRBO"). The homeowner's association in the drafter's case subsequently voted in favor of an amendment to the covenants to clarify the covenants in a way that resulted in a complete ban on short term rentals. The drafter wrote the bill to prevent associations from changing the rules and/or re-interpreting rules after someone buys a property. Proponents of the bill argued the importance of knowing what rights a homeowner has when purchasing a home and having a guarantee that those rights remain in effect during the entirety of their ownership. Sudden restrictions in the type of use could force a homeowner to sell their home or prevent them from using the property as intended. Further, changes in restrictions on types of use after purchase may force a homeowner to use the residence in a manner inconsistent with the use reported on

loan applications, tax documents, etc. The Montana Legislature agreed with the policy reasons behind the bill, adopted the bill, and made it effective as of May 8, 2019. The point for the present brief, however, is that the Montana Legislature referring to short-term rentals as potentially "residential" in this statute contradicts the HOA's contention that short-term rentals can never be considered "residential."

The fact remains that whether the use is by owners, friends, family, the principals of a legal entity, or whether the use would be regulated under the Residential Landlord and Tenant Act, under M.C.A. § 50-51-103 et. seq., or under any other law or no law, if the home is used as a residence or dwelling then the use is allowed under these Amended Covenants.

### **CONCLUSION**

The focus of the covenant language is on the type of "use[]", not *who* uses the property. *See Amend. Covenants*. Looking at the plain language of the Amended Covenants and strictly construing the language, the language does not specify *who* must use the property as a residence. *Id.* The language does not say residential tenants may not use the property. *Id.* The language does not say the LLC's members' families cannot use the property. *Id.* Rather, the Amended Covenants focus solely on the *type* of "use" (i.e. what people, no matter who they are, may actually be doing at the property). In other words, the distinction between the owners using the property as a residence and renters using the property as a residence is simply non-existent within the actual language at issue. The Amended

Covenants do not restrict *who* may use the property nor do they restrict the length of use; the Amended Covenants only restrict the *type* of use. The Amended Covenants only specify that the property itself must be used as a residence. In this case, the property is being used as a residence no matter who is using it.

Residential use is commonly understood as using the property as a dwelling. As the Montana Supreme Court said almost two decades ago, "...if it looks like a duck, walks like a duck and quacks like a duck, it must be a duck. We would only add that it must be a duck even if it is holding a piece of paper that says it is a chicken." *Wild v. Fregein Construction* (2003), 315 Mont. 425, 63 P.3d 855, ¶31. No matter how the Plaintiffs try to characterize the use, the fact is Brown Drake's home is used as a dwelling by everyone who uses it. There is no difference between a family of four renting the property for a week to fish and Cindi Bratvold's knitting group using the property for a week. The essential nature of the use remains the same. The semantics of how the persons may be labeled by others (i.e. "tenant" or "friend") do not change the character of the use. A rose by any other name is still a rose. Residential use by a friend or residential use by a short-term tenant is still residential use. The use is allowed in either case.

Interpreting the Amended Covenants to now preclude short-term rentals would effectively deprive Brown Drake of much of the value of its property, could potentially impact its financing, and would be inconsistent with how other properties have been treated. At the time Brown Drake purchased its property, it

was told that at least one other home in the same Amended Covenant area had been rented out at various times of year without any objections, which was true. *See Aff. of Bratvold*, ¶ 6; and *Aff. of Lappier* ¶¶ 4-8. The property currently owned by Plaintiff Maricich Family Trust was also rented as a residential rental at one time. *Id.* at ¶ 8; and *Id.* Brown Drake purchased the property with the expectation of using the property in the same manner as other owners (as a part-time rental) and expected its right to use the property in that manner remain in effect during its ownership. *See Aff. of Bratvold*, ¶ 7.

The Amended Covenants were not previously interpreted as precluding rentals. This Court, as well as other courts around the country, have previously avoided depriving owners of the reasonable expectations that existed when they purchased their properties. *See e.g. Houden v. Todd*, 2009 WL 10243654 (Mont. Dist., Aug. 12, 2009), \*6 (aff'd in relevant part by 2014 MT 113, 375 Mont. 1, 324 P.3d 1157); *Wilkinson v. Chiwawa Communities Ass'n.*, 180 Wash. 2d 241, 257, 327, P.3d 614, 622-23 (2014) (invalidating an amendment adding a short-term rental prohibition); and *Estates at Desert Ridge Trails Homeowners' Ass'n.*, 300 P.3d 736, 744 (N.M. App. Ct. 2013) (concluding that prohibiting short-term rentals was an "unreasonable restriction on Defendant's use of his lot."). At the time Brown Drake purchased its property, the Amended Covenants were not

enforced<sup>2</sup> as preventing the short-term rental use that the HOA now complains of. Brown Drake's expectation that it could rent the property is reasonable. The HOA should not be permitted to interpret the Amended Covenants differently now to limit Brown Drake's use of its property.

If the Court affirms the District Court, its holding will be consistent with Montana's existing covenant laws. Brown Drake, its owners, and its guests will continue to use the home as a dwelling (sleeping, cooking, eating, bathing, and communicating with each other – including sitting out by the fire pit just like the neighbors do at their own fire pit). The use will remain as a dwelling and will be no more than would be expected of any dwelling.

To the extent the HOA is attempting to make their lawsuit against Brown Drake appear more reasonable by complaining about a hypothetical hotel in the future, that hypothetical is not only not at issue before the Court, the hypothetical is silly. Brown Drake constructed its building after buying the lot. Brown Drake did not build a hotel. Brown Drake has no intention of building a hotel, nor would that even be financially viable. The town of Craig does not even have enough

---

<sup>2</sup> As Brown Drake argued in its summary judgment brief, M.C.A. § 70-17-901 arguably prohibits any enforcement of the Amended Covenants at this time in the present case. Under this new law, after May 8, 2019 the Appellants cannot "enforce" more onerous restrictions than those enforced at the time Brown Drake purchased the property. Because the District Court correctly interpreted the Amended Covenants, however, it is not necessary to address that argument on appeal.

business to support a gas station. No hotel could survive only renting rooms for a few months out of the year. A hotel has not been threatened nor is it reasonably a risk.

At any rate, whether a hypothetical future hotel (built by someone other than Brown Drake) is allowed or not is not before this Court in this litigation. Generally speaking, "Courts can only decide justiciable controversies – those that are 'definite and concrete, touching legal relations of parties having adverse legal interests and admitting of specific relief through decree of conclusive character.'" *City of Deer Lodge v. Fox*, 2017 MT 129, ¶ 8, 387 Mont. 478, 395 P.3d 506. Moot, hypothetical, or abstract questions are not something the Court has the authority to decide. *Id.* The issue in the present case is limited to Brown Drake's use and whether that use is residential. The hotel hypothetical will have to wait until there is an actual controversy over that hypothetical.

The issue before the Court is whether Brown Drake's current use is residential or not. The District Court reached the correct conclusion when it held that Brown Drake's use is residential. No matter what label the HOA is trying to pin on the users (i.e. friend, owner, tenant, guest, etc.), the fact remains the *use* is residential. There can be no genuine dispute that the *use* is residential because there is no genuine dispute over the fact that the home is used as a dwelling. Accordingly, Brown Drake's use complies with the Amended Covenants. The District Court did not make a mistake by enforcing the Amended Covenants as

written. The District Court's grant of Brown Drake's motion for summary judgment was appropriate. Thus, Brown Drake is respectfully requesting that this Court affirm the District Court's March 10, 2020 Summary Judgment Order.

Respectfully submitted this 26<sup>th</sup> day of August, 2020.

/s/ Reid Perkins  
Reid J. Perkins, Esq.  
WORDEN THANE P.C.  
P.O. Box 4747  
Missoula, MT 59804  
(406) 721-3400

Attorneys for Appellee Brown Drake

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect 11.0 for Windows plus counting the words in the screen shot depictions of documents is 9,616 words, not averaging more than 280 words per page, excluding the certificate of service and certificate of compliance.

Dated this 26<sup>th</sup> day of August, 2020.

/s/ Reid Perkins  
Reid J. Perkins, Esq.  
WORDEN THANE P.C.  
P.O. Box 4747  
Missoula, MT 59804  
(406) 721-3400

Attorneys for Appellee Brown Drake

**CERTIFICATE OF SERVICE**

I certify that on August 26, 2020, I served a true and correct copy of the preceding document, by prepaid mail, on the following parties and amici:

Dave Dalthorp  
Scott Svee  
Jackson, Murdo & Grant, P.C.  
203 North Ewing  
Helena, MT 59601

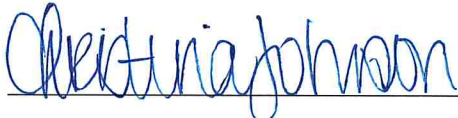
Attorneys for Appellants

Alanah Griffith  
GRIFFITH & CUMMINGS, PLLC  
P.O. Box 116748  
Big Sky, MT 59716

Attorney for Amici Curiae  
Community Association Institute

Afton E. Ball  
Stephanie Baucus  
MOULTON BELLINGHAM PC  
27 North 27<sup>th</sup> Street, Suite 1900  
Billings, MT 59103

Attorneys for Amici Curiae  
Muggli

Signature: 

## CERTIFICATE OF SERVICE

I, Reid J. Perkins, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-26-2020:

David C. Dalthorp (Attorney)  
203 North Ewing Street  
Helena MT 59601

Representing: Tara J. Chapman, Craig Tracts Homeowners' Association, Beverly A. Friend, Donald C. Friend, Hemingway Patrick & Carol T. Revocable Living Trust, Matthew B. Losey, Sallie A. Losey, Mickelson Investments, LLC, Robert J. & Andrea E. Maricich Family Trust  
Service Method: eService

Scott Michael Svec (Attorney)  
203 N Ewing  
Helena MT 59601

Representing: Tara J. Chapman, Craig Tracts Homeowners' Association, Beverly A. Friend, Donald C. Friend, Hemingway Patrick & Carol T. Revocable Living Trust, Matthew B. Losey, Sallie A. Losey, Mickelson Investments, LLC, Robert J. & Andrea E. Maricich Family Trust  
Service Method: eService

Alanah Noel Griffith (Attorney)  
P.O. Box 160748  
Big Sky MT 59716  
Representing: Community Association Institute  
Service Method: eService

Afton Eva Ball (Attorney)  
Moulton Bellingham PC  
P O Box 2559  
27 North 27th Street, Suite 1900  
Billings MT 59103  
Representing: Steven Muggli, Gayle Muggli  
Service Method: eService

Electronically signed by Christina Johnson on behalf of Reid J. Perkins  
Dated: 08-26-2020