

GLASTONBURY LANDOWNERS ASSOCIATION, INC.

Recommendations for Covenants & Master Plan Changes

October 22, 2015

NOTE: Changes in the Declaration language are denoted with *italics* (new language) and ~~strikethrough~~ (removed language.)

PROPOSED SECTION 3 DEFINITIONS CHANGES AND OTHER SECTIONS TO CONFORM WITH SECTION 3 CHANGES

[Governing Documents Committee (GovDocCmte) notes: Delete “3.11 Development” since the term is redundant to the “community” definition and ‘development’ is used in two ways throughout the Covenants. Replace “development” in the following areas with “community” and re-number definitions section accordingly.

Section 6.06 is included since it is currently affected by this change; however this 6.06 language would be superseded if the overall revisions proposed for Section 6 are approved.]

[Lawyer input: changing “development” to “community” is OK since “community” is already defined and its use here is in line with that definition.

Add a definition for “site preparation” to define its use in proposed changes to Section 6.01, since staking out a building is part of the common definition of site prep, however the GLA does want landowners to stake out building sites before an application has been submitted and given preliminary approval so setbacks can be checked.]

3.11. ~~Development.~~ The Community of Glastonbury.

3.24. *Site Preparation.* *The first phase of construction-related activity for a structure and may include excavation, blasting or rough grading. This definition does not include staking a building site.*

6.06. ~~Fallout Shelters.~~ ~~It is was the policy of this development community to recommend but not require the construction, installation or availability of a fallout shelter underneath, behind, in the basement of or within reasonable proximity to every dwelling or habitation placed upon any parcel.~~

7.03. ~~Recreational Use of Platted Road Easements.~~ ~~The platted road easements described in Section 8 and shown on the Certificates of Survey of the Community, outside of improved roadway surfaces for motorized traffic and ditches, may be used by Landowners and their families and guests for recreational travel by foot and horseback throughout the development community. Any scenic turnouts or picnic areas placed on the easements by the Association are for the recreational use of all Landowners.~~

9.06 ~~Review Process f.~~ ~~A disapproval based upon failure to meet the minimum standards of the development community, inconsistency with the founding principles of the Community or with this Declaration.~~

PROPOSED CHANGES TO COVENANTS SECTION 5:

[GovDocCmte notes: Section 5.01 doesn't belong in the Covenants. Putting this in the Covenants with the word "shall" shifts a burden of enforcement on to the GLA when these items are already governed and enforced by the state or the county. Yet if we simply change the "shall" to "may" to reduce the GLA's liability of enforcement, we would then have the GLA giving permission to break laws, which is also a problem.]

SECTION 5. RULES OF HEALTH, SAFETY, NUISANCE AND LAND USE

~~**5.01. Laws, Ordinances and Regulations.** Each Landowner shall abide by and obey all laws, regulations, rulings and ordinances lawfully enacted by the State of Montana or any political subdivision thereof, including Park County, and including, but not limited to, fire, health, safety and sanitary laws and regulations; except that a Landowner may in good faith vigorously challenge the legality of any such law which he believes to be unlawful or unconstitutional.~~

[GovDoc Comm Notes: Fire rules are already set and enforced by County and the Fire Marshall. We can put a link to the FireWise site on the GLA website to inform landowners of the laws. Some of these are also unenforceable by the GLA.]

~~**5.02. Fire Rules.** The following fire rules shall be binding upon every parcel and are the responsibility of each Landowner:~~

~~a. When the U.S. Forest Service or other public agency fire danger designation for the area is high, outdoor fires shall be burned only in an enclosed facility or receptacle having a properly operating and approved spark screen;~~

~~b. All fireplaces, whether inside a building or outdoors, shall have an approved spark screen covering the top of the chimney;~~

~~c. Chimneys and wood-burning stove flues shall be cleaned regularly to reduce the hazard of house fires;~~

~~d. Any condition which creates a fire hazard shall not be permitted on a parcel. It is recommended that all structures be surrounded with an adequate fire break;~~

~~e. A Landowner shall be liable to any damaged party for any negligently caused fires escaping from his parcel, except for those fires caused naturally by "act of God" or by an instrumentality outside of his control, such as lightning or a shorting power line crossing his property, etc.; and~~

~~f. All open fires or burning must be in compliance with applicable laws and regulations. Permits shall be obtained by Landowners when required.~~

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[GovDocCmte Notes: The sections eliminated are an area of County Sanitarian jurisdiction.]

~~**5.03 5.01. Sewage Disposal.** Each Landowner shall dispose of domestic sewage in a manner approved by the Association and any public health authorities with jurisdiction, including the Park County Health Department. No outhouses shall be allowed except as permitted by county and state regulations.~~

~~**5.04 5.02. Refuse Disposal.** All refuse, rubbish, trash, garbage and waste shall be kept, disposed of or regularly removed in a sanitary manner. Refuse shall not be allowed to accumulate so as to cause odor or unsightliness.~~

~~**5.05 5.03. Nuisances and Eyesores.** Nuisances and eyesores shall not be allowed. It shall be in the Associations discretion and authority to determine what a nuisance or an eyesore is and to require removal, correction or abatement by the Landowner upon the giving of reasonable notice as provided in Section 10.02. Specifically, the following conditions shall not be allowed on parcels within the Community:~~

- ~~a. Abandoned trailers, mobile homes and other structures, junk (inoperative or unregistered) cars and equipment, scrap piles, brush piles, etc., in open view of platted roads and other parcels or land; and~~
- ~~b. Noxious odors, excessive noise or vibration, nuisances or other annoyances which, in fact, are infringing upon another's quiet use and enjoyment of his land.~~

~~**5.06 5.04. Industry and Mining.** "Industrial" activity, strip mining, quarrying, excavating and other activities which produce smoke or chemical wastes, pollute water and air or tend to degrade the environment shall not be allowed in the Community, except for minor activities in connection with the building of structures and improvements on a parcel or as is otherwise approved by the Association from time to time.~~

~~**5.07 5.05. Commercial Activity.** It is the intent of these covenants that the Community of Glastonbury should be a predominantly rural/residential community that allows for the reasonable and productive exercise of free enterprise by its residents, and which both encourages fixture orderly growth and protects valuable rural and residential land qualities. The restrictions on commercial activity shall include the following:~~

- ~~a. Such activity may not be a nuisance or an eyesore;~~
- ~~b. Commercial business activity other than that contained within a dwelling unit must be concealed by fence, wall, landscaping, shrubs, land berms or the like as required by the Association from time to time;~~
- ~~c. Signs may be erected only as allowed by Section 6.04 or as otherwise permitted by the Association;~~

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- d. Adequate off-street parking must be provided as defined by the Association or in the Master Plan;
- e. The Association may establish setback requirements for commercial structures from time to time that are substantially in excess of those required by Section 6.02 in order to prevent the unsightly accumulation of commercial establishments along platted roads and boundary lines in a predominantly rural/residential community;
- f. Bars, lounges, liquor stores, stills, and the production, sale, service or use of tobacco products, liquor, wine, beer or other alcoholic beverages in commercial establishments shall not be permitted;
- g. Adult bookstores and the sale or display of pornographic literature or materials shall not be permitted;
- h. Establishments which provide, feature, or allow gambling, nude dancing, stripping, pornographic or X-rated films, lewdness or any illegal activity shall not be permitted, and the Association shall have the discretion and authority to require that any such commercial activity be terminated; and
- i. Additional restrictions upon or regulation of commercial activity shall be as set forth in the Master Plan.

~~5.08~~ 5.06. Cottage Industry and Light Manufacturing. Nothing stated herein shall prevent a Landowner from carrying on cottage industries, home occupations, home businesses, professions, warehousing and activities of light manufacturing located in a Landowner's dwelling or auxiliary buildings which produce no substantial sound, odor or vibration such as to be a nuisance to others and which are not in violation of any other provision of these covenants.

~~5.09~~ 5.07. Institutional Activity. Institutional and quasi-public activities, improvements and structures, such as schools, churches, hospitals, museums, libraries, fire stations, community centers and services, etc., shall be allowed as provided in Section 6.01, and otherwise only in accordance with the Master Plan. However, nothing provided herein shall prevent Landowners from conducting lawful religious, educational and charitable activities with their own families and guests on their own property or from erecting and maintaining private chapels and shrines thereon.

~~5.10~~ 5.08. Live Timber. Except as provided below, natural live timber may not be commercially harvested or cut without the approval of the Association.

- a. Certain parcels may be evaluated by the Association as being "moderately" or "heavily" timbered. Trees may be cut for firewood, fencing or building structures on these parcels only - however, no more than thirty-three percent (33%) of the original amount of timber on a given parcel may be cut. Deadfall, standing dead and diseased trees shall be cut before healthy living trees. Trees native to a parcel may not be commercially harvested or cut for commercial firewood and hauled away.

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- b. Trees may be cut and removed on any parcel in small quantities in order to clear sites for construction, roadwork and firming.
- c. Trees may be planted, grown and then commercially harvested by a Landowner on any parcel.

[GovDocCmte Notes: Section 5.11 is under the jurisdiction of the Montana DEQ. The Covenants do not have the level of authority to extend to the GLA power over water rights. Section 5.12a is under the jurisdiction of the Montana DEQ. The Covenants do not have the level of authority to extend to the GLA power over spring water rights. Section 5.12d is under the jurisdiction of the Montana DEQ and adds a liability to the GLA that is unnecessary, since the official well records can be found on a Montana website. Section 5.13 mineral rights are governed by a higher authority than the Covenants, further, the GLA doesn't have the right to allow "noncommercial use of any of the minerals existing within six (6) feet of the surface."]

[Lawyer input: Added clarifying language to "5.12 Subsurface Water Use" since the original language was not that clear or specific.]

~~**5.11. Surface Water Use.** Except for any existing surface water rights and permits as of the effective date hereof, Landowners may not newly appropriate or use the surface water on a parcel without the prior approval of the Association. All appropriations and use of surface water shall be in accordance with state law and shall be subject to all prior valid rights.~~

~~**5.12 5.09. Subsurface Water Use.** Landowners are entitled to appropriate and use subsurface water by drilling wells in accordance with state law.~~

~~a. Spring development may only be made with the approval of the Association and must be made from an underground water source or aquifer, or at the point of discharge, from within the parcel. Others may have already appropriated and reserved certain spring water or spring fed surface water for irrigation, stock water, and other uses. Such spring water may not be appropriated or used by a Landowner without approval of the owner(s) of such water rights.~~

~~b. If the Association determines that a scarcity of water exists, it may implement a water use plan to remain in effect for the duration of the scarcity. In such an event, a use priority shall be given to the necessities of life, and all Landowners shall be required to abide by the terms of such a plan.~~

~~e. Any parcel in the Community which does not have sufficient ground water available to supply the needs of at least one dwelling (a "dry parcel") may, as a matter of right, obtain ground water from the most appropriate neighboring parcel. To establish such a right, the Landowner of the dry parcel must have tried and failed to drill a well on his own parcel through a commercial driller at least two times and must submit the results of a study to the Association, such as by a qualified geologist, *electro-seismic survey* and or a dowser's report, if requested, showing the likelihood of no water on his parcel and the likely location of ground water on a neighboring parcel. The Association shall arbitrate any disagreements between the Landowners of a dry~~

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parcel and a neighboring parcel in the allocation of ground water, and its decision shall be final and binding. In addition, the Landowner of the neighboring parcel to be used shall have the option of:

i. Sharing his existing well or a planned common well with the dry parcel; or

ii. Requiring the Landowner of the dry parcel to drill his own well, which well must be located as close as is reasonably possible to the common boundaries of the parcels or in a location preferred by the owner of the neighboring parcel.

If a common well is shared, the Landowner of the dry parcel must pay his fair share of all reasonable expenses incurred in the establishment of such well and all costs associated therewith. All necessary and reasonable easements for placing and maintaining any such well and transporting said water to the dry parcel shall be given by the owner(s) of the neighboring parcel.

~~d. Each Landowner that successfully drills a well is required to provide the Association with a report that states the location, depth, flow, quality and cost of the well. A similar report is required for drilling operations that fail to produce a well. This information will be kept in a well log by the Association for inspection by prospective purchasers and other Landowners.~~

5.13. Mineral Rights and Development. ~~The original developer of the Community has expressly excepted and reserved all oil, gas, coal, hydrocarbons, geothermal water and energy, and other minerals, together with the mineral and geothermal rights thereto owned by it, and the right to appropriate, extract, develop and use the same. After the effective date hereof, such reservation shall not include the right of surface entry on land not owned by the owner of the mineral rights without the consent of the Landowner. The Association may permissively allow the reasonable nonecommercial use of any of the minerals existing within six (6) feet of the surface by a Landowner for use on the parcel owned, provided that such use is reasonable and will not exhaust or denude the property of its mineral resources.~~

PROPOSED CHANGES TO COVENANTS SECTION 6.

[GovDocCmte Notes: In general, taking out anything that is governed by other standards or higher authority. 6.01 added wording about projects exempt from Association review to reduce the burden on both the association and landowners for small buildings such as a garden shed. This change retains the review requirement for any dwelling since this affects the assessment status of the property. 6.07 reduced the areas the Association is liable for overseeing and removes wording that is subjective.]

[Lawyer input: In Section 6.05, define Mobile Home using Montana law, not the Master Plan.]

6.01. Association's Approval. A site plan and building plans satisfactory to the Association must be submitted by a Landowner to the Association for review and approval prior to beginning *site preparation and/or* construction of any structure, the placing of any ~~mobile~~ *modular or manufactured* home on a parcel, *creating roads and driveways*, or the carrying out of any other project for which review is required by the Master Plan, these covenants or any rule or regulation adopted in accordance therewith. The Association may retain a copy of the said plans in its files. The design of any improvement shall be safe and in accordance with this Declaration and the Master Plan.

Projects exempt from Association review are:

- *Landscaping,*
- *A structure 200 square feet or less that is not a dwelling unit nor changes the status of any building to a dwelling unit, and meets the setback requirements.*

The Association shall conditionally or unconditionally approve the plans and make any recommendations deemed necessary or advisable, unless:

- a. The plans are incomplete, are in violation of or are not in accordance with these covenants, the Master Plan, or any rule or regulation adopted in accordance therewith;
- b. The proposed structure is, in the Association's opinion, unsafe, unsound, could pose a menace to the safety and health of other persons, or requires the assistance or input of an engineer; and/or
- c. The plan or the proposed structure is unlawful in any way.

The Association's approval of any plans, together with any conditions or recommendations, shall not constitute an acceptance of any liability or an approval of the design, engineering, safety or legality of the structure or project - and the Association is hereby exempted from liability therefor.

6.02. Setback Requirements. No structures shall be placed within 25 feet of any parcel boundary line or 15 feet of any easement crossing a parcel, without prior approval of the Association. This applies to buildings and major improvements but not to fences, landscaping, roads, driveways, walks, sprinklers, etc.

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6.03. Utilities. All electrical and telephone lines, ~~water and sewer pipelines, septic tanks, cisterns, drainfields, gas lines and other utilities~~ installed after the effective date of these covenants shall be placed underground. ~~Pipelines and gas lines shall be placed least 36" beneath the surface. Electric and telephone lines shall be placed at least 12" — 18" beneath the surface, unless adverse geologic conditions require otherwise. Propane or other fuel tanks, windmills, tanks, pumps and the like may be placed above ground.~~ In any event, the installation of all utilities and lines shall be in accordance with the Master Plan and all applicable statutes, regulations, ordinances, rulings and other code requirements in effect at the time of the installation.

6.04. Signs and Billboards. The design and location of all exterior signs shall be in accordance with written guidelines adopted by the Association or shall be specifically approved by the Association prior to installation.

6.05. Mobile Homes/House Trailers. *No further mobile homes as defined in Montana Code Annotated § 15-24-201 (2015) and any amendments thereof are allowed in the Community outside of the Golden Age Village. Mobile homes existing prior to February 7, 2007 are addressed in the Master Plan. There are restrictions on the use of mobile homes and trailers in the Community, including, but not limited to, the following:*

a. ~~The Association shall enforce rules that require Landowners to provide a roof and exterior facade on mobile homes that are more in keeping with the general character and quality of the Community as defined in the Master Plan, or to conceal them from view from roads and other parcels by landscaping, earth berm, fence, wall, etc. Landowners are encouraged to landscape their parcel and obtain quality mobile homes. Exterior wood or wood-like finishing on mobile homes is preferred.~~

b. ~~Mobile homes and trailers must also meet any further standards set forth in the Master Plan.~~

6.06. Fallout Shelters. ~~It is the policy of this development to recommend but not require the construction, installation or availability of a fallout shelter underneath, behind, in the basement of or within reasonable proximity to every dwelling or habitation placed upon any parcel. Fallout shelters are allowed in the community. Installation of new ones subject to the project approval process as described in Section 6.01.~~

6.07. Maintenance. All structures and improvements, ~~including roads, fences, ditches and agricultural structures,~~ shall be ~~properly maintained and kept in good condition by~~ Landowners so that they are not allowed to become dangerous, unsightly or unsanitary, or to cause a fire hazard.

PROPOSED CHANGE TO COVENANTS SECTION 11.06:

[GovDocCmte Notes: This section received a lot of feedback in the 2014 survey and in Board meetings requesting the changes to the interest rate, the way it is computed and the penalty.]

[Lawyers' input: The current, relatively high interest rate and the compounding of interest could be considered usurious and may not be upheld in court. The Association should change it if we intend to pursue collection of past dues in court.]

11.06. Effect of Nonpayment of Assessment. If any assessment is not paid by midnight on the date when due, then such assessment shall become delinquent and shall, together with any interest thereon, become a continuing lien on the parcel which shall run with the land, if the assessment remains unpaid for thirty (30) days after such due date, ~~a five percent (5%) penalty will accrue on the amount of the payment due and~~ the assessment shall thereafter bear interest from the due date at the rate ~~of one and one half percent (1-1/2%) per month, compounded monthly set by the Prime Rate as posted in the Wall Street Journal or its successor as of December 1st of the year preceding the next assessment year plus three percent (3%) per year, simple interest.~~ The obligation to pay any assessment, penalty or interest of the current Landowner of any property in the Community subject to assessment shall not be affected by any conveyance or transfer of title to said parcel unless waived or agreed upon in writing by the Association. The Association may bring an action at law against a Landowner to collect delinquent assessments, penalties and interest and/or to foreclose on the lien against the parcel, and there shall be added to the amount of such assessment the cost of collecting the same or foreclosing the lien thereof, including reasonable attorney's fees.

PROPOSED CHANGE TO COVENANTS SECTION 12:

[**Lawyers' input:** Since "necessary" is too nebulous and hard to defend in court, the better language is "would create a reasonable hardship" since it is easier to define and is in keeping with intent of this Section.]

12.01. Variances, Waivers. The Association reserves the right to waive or grant variances to any of the provisions of this Declaration, where, in its discretion, it believes the same ~~to be necessary~~ *would create a reasonable hardship* and where the same will not be injurious to the rest of the Community.

SIMILAR RECOMMENDED CHANGE TO THE MASTER PLAN 4.2 CRITERIA FOR GRANTING A VARIANCE:

[**Lawyers' input:** Waivers are never good, but waivers are necessary at this point since the Master Plan has problems that need fixing/eliminating, and members voted in favor of the Master Plan because there was a variance provision for unusual circumstances. (For instance, there is at least one property that is 100 feet wide that cannot be built upon due to the increase in setbacks in the Master Plan.) Until the Master Plan is changed the proposed language is better by establishing this as criteria to consider. Since not all situations requiring a waiver will meet all five criteria, the current language defeats the intent of the section.]

4.2 Criteria for Granting a Variance. A variance may be granted upon ~~finding compliance with all of~~ *considering* the following criteria:

1. Exceptional or unusual circumstances exist over which the Landowner has no control (for example, topography).
2. The requested variance is not materially detrimental to neighboring properties; or if the requested variance may adversely affect neighbors, the Landowner requesting the variance may offer mitigating actions to help offset any detrimental effect of the requested variance, subject to review by the affected Landowners and the Association Board.
3. The variance requested is the minimum variance to remedy a particular circumstance.
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).
5. All variances must meet local, county and state requirements.