

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

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DENNIS RILEY, WENDY RILEY,	)	Cause No. DV-2021-101
JERRY LADEWIG, JEFFREY	)	
LADEWIG, MARK SEAVER,	)	
ANDREA SEDLAK, MARTHA	)	
MCALISTER, JOHN MCALISTER,	)	<b>STATUS REPORT</b>
together with an on behalf of other	)	
lot owners,	)	
	)	
Petitioners,	)	
vs.	)	
	)	
GLASTONBURY LANDOWNERS	)	
ASSOCIATION, INC.	)	
	)	
Respondent.	)	
	)	

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**Glastonbury Landowners Association Election Report**

**Background**

Judge Swandal determined it best to hold an election for the board and to answer the question of separation as soon as possible this year rather than wait for the normal November annual meeting when board elections are held. All voting would be by absentee ballot conveyed by US Post, email, or fax. There would be no in-person voting. The election would seek to fill 6 board positions in each of North and South Glastonbury. Two-year terms would be awarded to the top three vote recipients in each of North and South. The three lower vote recipients would be awarded one-year terms. The next election would be schedule for November 2023.

The GLA election process began with the call for nominations for board candidates for North and South Glastonbury. Nomination packets, including all required forms, were mailed to all landowners in North and South Glastonbury on June 1<sup>st</sup>, 2022, to be returned by July 6<sup>th</sup>. Eligible candidates who were in good standing with the GLA were accepted on the official ballot for the 6 positions from each of North and South Glastonbury. There were nine candidates from North Glastonbury and seven candidates from South Glastonbury.

Separate ballots were developed for North and South Glastonbury (only North property owners can vote for North board members and ombudsman and South property owners for South board and ombudsman.). The ballots, along with detailed instructions for completing the ballot and submitting them to Swandal Law, were included in packets mailed to all Glastonbury landowners on July 15<sup>th</sup>, 2022. Ballots were due to be returned by end of day on August 19<sup>th</sup>, 2022.

Accounting and Tax Solutions (ATS) of Livingston was selected to count the ballots. Detailed instructions based on the normal counting procedure for the GLA elections were written, provided to Judge Swandal for his approval, and then provided to ATS. Separately, the landowner list was analyzed to determine the members in good standing – those who had paid all their assessments and who had no outstanding covenant violations. This list was provided to Judge Swandal and to ATS to be used in their counting process. (Ballots from landowners not in good standing were not opened and counted.). ATS collected all the ballots from Swandal Law on Wednesday, August 31<sup>st</sup>, 2022, to be processed and counted on Saturday, September 3<sup>rd</sup>, 2022.

There are a total of 407 properties in North and South Glastonbury, 204 in North and 203 in South. Combined, there were 333 properties in good standing. Quorum consists of 25% of the total members in good standing for any election. Quorum was achieved if there were 83 ballots from members in good standing.

## Results

On a historical basis, there was excellent turnout for this election. There were a total of 258 ballots submitted. Of those, 232 ballots were from properties in good standing and with verified credentials to be allowed to vote and be counted. The 232 ballots represented 70% of the 333 total number of properties in good standing.

### Ballot Breakdown:

**Total Eligible (good standing & verified) Ballot Submissions – South:123**

**Total Eligible (good standing & verified) Ballot Submissions – North:109**

**Total Eligible (good standing & verified) Ballot Submissions: 232**

### Vote Results:

#### South Board Election

Stomierowski	88	Two-year Term
Riley	72	Two-year Term
Kremer	68	Two-year Term
Seaver	57	One-year Term
Roskind	57	One-year Term
Sedlak	55	One-year Term
Ladewig, Jeff	51	
Nearest write-in	13	

#### South Ombudsman Election

Ladewig, Jerry	50	One-year Term
Nearest write-in	32	

#### North Board Election

Gelderloos, Hendrik	69	Two-year Term
Wieczorek	66	Two-year Term
Carp	59	Two-year Term
Jensen	56	One-year Term
Schreyer	55	One-year Term
Kozlik/Squires	51 (tie†)	One-year Term
Dirkers	50	
Gill	48	
Nearest write-in	4	

#### North Ombudsman

Brunson (write-in)	17	One-year Term
Nearest write-in	9	

† Note for the tie vote –The winner will be selected by coin toss at the first meeting of the new Board with all members and landowners are present.

## **Separation of Glastonbury Landowners into Two Independent Units – Glastonbury North & Glastonbury South**

On the same ballot with the board member and ombudsman candidates, there was a question of the landowners as to whether they favored separation of the GLA into two units or keeping them as a single unit. Judge Swandal requested that a single, two-sided sheet written by landowners/board members arguing each position be enclosed with each ballot packet (see Appendices).

### **Separation into 2 Units – North & South**

South:

Separate:	81
Remain as-is:	41

North:

Separate:	45
Remain as-is:	62

#### **Combined Separation Vote:**

<b>Separate:</b>	<b>126</b>
Remain as-is:	103

### **Consideration of the Separation Question**

Glastonbury is governed by a set of governing documents starting with the Bylaws that define the incorporation of the homeowners' association – Glastonbury Landowners Association. The Bylaws incorporate by reference a second document – the Covenants – that define the management of parcels of land, what can be put on them, fees, etc. The Covenants incorporate a third document – the Master Plan – that goes into more detail about the definitions of types of land use, parameters of buildings, etc.

The Bylaws, Article V. concerns Meetings of Members and defines such meetings, including the annual meeting and special meetings, which arguably this election is. In subsection F, specifically referring to voting:

**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) at all meetings 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.

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 the election or voting 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 you eligible to vote on that day.

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

1. Each Membership Interest is entitled to one vote;
2. A Member may hold more than one Membership Interest and shall have a separate vote for each such interest;
3. The Association shall be entitled to rely on the acts of one joint owner of a Membership Interest, which shall be conclusive as to that Membership Interest and binding upon the other joint owners. In the event the Association is made aware by written notice that the joint owners of a Membership Interest cannot agree as to how the vote of the Membership Interest should be cast, the Association may, in its discretion, grant each joint owner a fractional voting interest in proportion to his or her ownership interest, or may disregard the vote of such Membership Interest entirely;
4. **If the total number of qualifying votes equals or exceeds fifty-one percent (51%) of the total Membership Interests of the Members in good standing who cast votes at the meeting, the vote shall be effective and shall have passed.**

I have highlighted the specific phrase concerning the passage of measures at meetings of the membership.

The Covenants in section 2 speaks to the Nature and Effect of Covenants. In subsection 2.05, it speaks to amending the covenants as follows:

**2.05. Amendments to Covenants. The covenants in this Declaration may be altered, amended, modified, waived, abandoned, or terminated in whole or in part at any time by the affirmative vote of at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time.** Any such vote shall be conducted in accordance with the bylaws and rules of the Association. The president and secretary of the Association may certify the results of such vote on behalf of the Association and its members in any instrument to be filed of record for the purpose of altering, amending, modifying, waiving, abandoning or terminating the covenants in whole or in part.

I have highlighted the relevant sentence in this section of the Covenants. So, depending on whether the interpretation of the question of separation is one of changing the Bylaws or changing the Covenants, the standard for judging the vote differs. One could reasonably argue that the separation of the organization is a matter of changing the Bylaws rather than the Covenants. This is part of the confusion in this matter. The clear majority of voters (126 of 229 or 55%) said YES to the split. The Bylaws would indicate that to be sufficient. However, the number of YES votes did not rise to the level of 51% of total members in good standing, whether they voted or did not vote (126 of 333 or 38%). This is the ambiguity that we are dealing with.

This leaves the court to decide if the vote to separate is sufficient in the context of the outcome of the earlier petition and mediation. It may be appropriate to invite respective counsels to file any briefs that they want on this matter.

DATED this 6<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
WM. NELSWANADAL

  
\_\_\_\_\_  
JOHN MCALISTER

**Appendix A**

**The Case for Separation of Glastonbury Landowners Association into Two Independent  
Units**

# Why Glastonbury Should Separate Into North and South

## **Background**

Your vote will decide whether the GLA should split into two independent organizations — North and South. This question is on the ballot because the GLA Board deadlocked for a long time and was extremely dysfunctional.

The 2020 election disintegrated into chaos and was dropped; efforts of several Board directors to resurrect it and to have a mediator intervene in the deadlock were blocked; efforts to have landowners vote to resolve the deadlock were blocked. In 2021, the dysfunction delayed road maintenance and snow plowing contracts for many months. The GLA website was not maintained, Board meetings were rarely held, minutes rarely published, and reports of Board email votes not disseminated since July 2020. Landowners were left in the dark.

Many were concerned about the threat to their property values. As a last resort, a group of landowners sued to dissolve the GLA (the only remedy under Montana Law for a deadlocked Board). The judge ordered mediation. The petitioners and board met and agreed that the better solution is to separate into two independent associations, North and South. The board approved the agreement. Now the judge wants landowners to decide.

## **The Current GLA Has Systemic Problems That Separation Will Solve**

### **The current structure is unfair.**

Currently, you only vote for one-half of the board. That means that one-half of the directors make decisions that affect landowners who cannot vote for them; (they decide everything: e.g., road maintenance, budget allocation, project applications, policies, assessments, fees, legal actions, etc.)

### **The structure is a recipe for deadlock.**

The GLA Covenants call for 12 directors, 6 representing North and 6 representing South. This

equal number enables deadlock, resulting in decisions not being made or being seriously delayed. Separation will allow each area to change its governing documents as it sees fit. For instance, you can structure your board to have an odd number of directors to avoid deadlocks.

### **The structure guarantees conflict.**

Differing priorities and goals in North and South areas lead to conflict. Directors are elected by landowners in their own area. Although all Directors are supposed to work for the good of all landowners, nothing guarantees that they do so. Some play favorites. Currently, Directors from the opposite area make decisions that affect your area but are more committed to their own constituents. When the two areas needs and priorities compete, directors representing the different areas can vote against each other.

### **The structure assumes “one size fits all.”**

North and South differ in several ways. For example, North has paved roads, while South does not. Separation enables each area's board to accommodate each area's unique needs to address local priorities.

### **Managing the GLA has become unwieldy.**

Much has changed since the GLA was formed in 1997. The number of parcels has grown exponentially and is currently over 400. Many people bought land in Glastonbury. Many are now only part-time residents; 45% of properties have owners with permanent addresses outside of Glastonbury (two-thirds of those are not in Montana). The number and diversity of owners make the association very difficult to manage.

## **Benefits of separation**

### **Separation will give you a stronger voice.**

You will vote for all directors who make decisions that affect you. They will be directly accountable to you and you can vote to replace them if you are dissatisfied with what they do.



**Separation will improve responsiveness.**

Your board's directors will be responsive only to your area's needs and committed only to your priorities. If your area wants to change its governance, it will be free to do so without resistance or competing demands from the other area.

**Separation will provide more efficient and manageable governance.**

Each separate board will be nimbler and accomplish tasks more quickly, with fewer roads to maintain, projects to review and monitor, properties to assess and track for dwellings and compliance, and legal actions to pursue.

**Separation will encourage greater landowner involvement.**

Many landowners are disgusted with the recent board dysfunction and deadlock. Separation opens the way for landowners to take advantage of the fresh start and volunteer for board and committee positions, knowing their efforts will be for the sole benefit of their own area.

**The Anti-Separationists Stoke Fear With False Claims; the Truth Is—**

**Separation will NOT be more costly.**

One-half plus one-half does not equal two. Road maintenance budgets are already separate for North and South, with separate tracking and payments, making for an easy transition. That will not change. Accountants and lawyers charge by the hour, so their costs will still be whatever they are to cover the needed services. You will only be charged for the accounting services and legal actions for your area.

**With separation, your costs will be fairer.**

Right now, your assessments pay to pursue scofflaws throughout Glastonbury, including those in the other area. Under separation, you will only pay legal fees to address non-payments and non-compliance in your own area.

**Road maintenance will NOT be affected negatively.**

Some say road maintenance will become an issue, but that's wrong. In fact, separating North

and South will enable more effective road maintenance. The road committee and Board for each area will focus only on their own area's roads, so inspections can be done more quickly and maintenance contracts decided sooner.

**Separation Will Ensure Continuity and Give You More Local Control**

**Separation only requires two changes.**

Both areas will still be governed by the existing Bylaws, Covenants, and Master Plan, but each area will need to amend their Covenants and Bylaws to specify their new numbers of Board Directors. The GLA's finances and assets will need to be divided fairly between North and South.

**Separation of finances and resources will be straightforward.**

The finances for road maintenance are already separate in the books. Other finances and assets would be divided equitably. Current common properties can continue to be accessible to all through easements each area grants to the other.

**You will independently determine your area's future.**

The other area will not dictate what you can or can't do. You can amend your governing documents to have an odd number of directors and make any other changes you want. You can decide your own road maintenance policies. For instance, you could choose to maintain (some or all) subdivision roads, or make other changes.

**Bottom line**

Much has changed since the GLA began. Systemic problems added to the recent dysfunction and plagued many past election cycles. It's time for a more stable solution to those problems. Separation offers a better future, through independence, local control, better board director accountability, and more efficient management.

**Voting FOR separation is a vote for better community harmony, fairer and more responsive local governance, and efficient protection of your property values.**

## **Appendix B**

### **The Case for Keeping Glastonbury Landowners Association a Single Unit**

**Dear GLA Landowners:**

**VOTE NO on separation and keep One Board for the following reasons:**

**Two separate communities would increase expenses and likely increase assessments.**

1. Most General Operating Expenses would increase or double, while assessments would be split almost in half between the two communities. Each community would be required to carry separate insurance, pay separate management/employee salaries, separate taxes and license fees, plus separate billing and accounting services. To cover the extra costs, either road maintenance budgets would be reduced or assessments would be raised.
2. Loss of Contractor Discounts would result from creating two separate road contracts (one for North and one for South), which would reduce our shared buying power. The contractors the GLA hires (like those who maintain our roads) would no longer be able to offer the huge discounts the GLA has long benefitted from. Road maintenance alone costs approximately \$80,000 per year. The division of North and South would thus reduce contractor discounts (buying power), which would increase road maintenance and snow removal expenses.
3. Legal Liability Costs for shared road easements and shared common lands located in both North and South Glastonbury would increase. There is no way to legally divide jurisdiction for these shared roads and lands. Separate boards with separate jurisdictions would require shared insurance, thus both North and South would have to carry this insurance for *both* communities thereby doubling this insurance cost, which is around \$8000 annually.
4. Various other expenses would increase: each board would have to hire a lawyer instead of sharing one to handle various legal issues, including review of new governing documents for each community; the rental of meeting spaces and storage units to store minutes, records, and project reviews; payment for contract employee(s) to separate and/or copy the files currently in one storage unit into North and South; etc.

**It's a BAD Idea with BAD results.**

1. Currently twelve board members are needed to properly run the GLA, six from North and six from South. Keeping the same number for each separate community would result in only six people trying to accomplish all that is required, likely causing some tasks to not get done. Four of the six would be officers (President, Vice President, Secretary and Treasurer) whose positions carry substantial duties. Add to that committee membership and assignments for project reviews, member complaints, legal issues, elections, finances, and road services. With so few people handling all these issues, landowners might see a reduction, denial or delay in services.
2. Assuring that people with the requisite skills fill roles is halved by the separation. And increasing the number of board members beyond six in each community might be a challenge.
3. Having two smaller boards allows for smaller quorums, opening the door for just two or three rogue Board members to create and pass bad rules and regulations.
4. Having separate communities could require the expense of creating new governing documents that might result in potentially harmful changes to, or disregard of, covenants and landowner rights, negatively impacting property values.

## **Our Strength is in our Union**

Our nation was established as one union of many states, and our forefathers had to compromise in order to create the foundational documents and structure we enjoy today. So too Glastonbury was born as one community of two parts, and ideally our board members should be willing to compromise and work together for the common good of all. Balance is achieved in finding common ground and building on it. It is far better and less expensive for landowners to elect board members with a willingness to work together than it is to divide our association.

### **SUMMARY**

#### **Separating Glastonbury needlessly exposes all landowners to unnecessary risks.**

Splitting North and South Glastonbury and having separate boards is NOT the best solution and risks major increases in landowner assessments to cover added expenses. It would put an extra burden on each smaller board to accomplish what is needed to function at an acceptable level of service. There is no guarantee it would eliminate the discord we would all like to move beyond. Separation is definitely not a benefit to the landowners but rather a decided burden.

Choose to keep us one community and to elect board members who are willing to work together toward finding common ground and balanced solutions.

We urge all members to vote "NO" on separating Glastonbury.

## CERTIFICATE OF SERVICE

I, Wm Nels Swandal, hereby certify that I have served true and accurate copies of the foregoing Report to the Court - Status Report to the following on 09-06-2022:

Ryan Kurt Jackson (Attorney)  
35 North Bozeman  
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Service Method: eService

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Service Method: eService

Electronically Signed By: Wm Nels Swandal  
Dated: 09-06-2022