

1 HON. BRENDA R. GILBERT
District Judge
2 Sixth Judicial District
3 414 East Callender Street
Livingston, Montana 59047
4 406-222-4130

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

10 DENNIS RILEY, WENDY RILEY,)
11 JERRY LADEWIG, JEFFREY)
LADEWIG, MARK SEAVER,)
12 ANDREA SEDLAK, MARTHA)
13 MCALISTER, JOHN MCALISTER,)
together with and on behalf of other)
14 lot owners,)
Petitioners,)
15)
16 vs.)
17)
18 GLASTONBURY LANDOWNERS)
ASSOCIATION, INC.,)
19 Respondent.)
20)

CAUSE NO. DV 21-101

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER REGARDING
PETITION FOR JUDICIAL DISSOLUTION
OF NONPROFIT CORPORATION**

21 The Court, having reviewed and considered all filings of record, and having held a hearing
22 on January 10, 2021, upon notice to all members of the Glastonbury Landowners Association, Inc.
23 (“GLA”), and having considered the additional statements of individual landowners, as well as the
24 governing legal authority and the presentations of counsel at the hearing, hereby finds, concludes
25 and orders as follows:
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FINDINGS OF FACT

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1. On June 23, 2021, Petitioners herein filed a Petition to dissolve the GLA.

2. Petitioners are eight current landowners and members of the GLA. Three of them are current Board Members. Two of the Petitioners have recently served on the Board of the GLA.

3. Petitioners collected and provided the names and signatures of landowners representing approximately sixty (60) lots, in support of the Petition for Dissolution of the GLA.

4. The GLA is a Montana non-profit mutual benefit corporation located in Park County, Montana.

5. All the GLA members' lots which make up the GLA are in Park County, Montana, making venue proper in the Montana Sixth Judicial District Court, Park County, pursuant to §§ 25-2-118 -123, MCA.

6. The GLA was formed in 1997 as a mutual benefit corporation under Montana Code Annotated Title 35, Chapter 2.

7. The GLA presently consists of approximately 414 separate properties or lots. The GLA is geographically and organizationally divided into a "South" component and a "North" component. "GLA-South" consists of approximately 209 separate lots. "GLA-North" consists of approximately 205 separate lots. Each lot owner is a member of the GLA.

8. All GLA lots are subject to and bound by recorded restrictive covenants ("GLA Covenants"), governing uses of lots and establishing governance of the GLA, among other matters, such as assessments, maintenance and operation of shared resources, and others.

9. The GLA Covenants identify the division of GLA-North and GLA-South by identifying the respective properties by legal descriptions, which are part of the record herein.

1 10. The GLA is governed by its Bylaws (“Bylaws”). The Bylaws also contain a
2 division of governance authority between GLA-North and GLA-South.

3 11. The Bylaws provided for a Board of Directors (“GLA Board” or “Board”) to govern
4 the GLA.

5 12. The GLA Board is composed of up to six Directors from GLA-South and six
6 Directors from GLA-North. Directors serve two-year terms, with a term limit of four total years
7 (i.e., two consecutive terms). The Director terms are alternating such, that each year, three new
8 Directors from GLA-South and three new Directors from GLA-North must be elected.
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10 13. The 2020 GLA member meeting, including the election, was scheduled for
11 November 14, 2020, but never took place due to deadlock and division on the Board as to election
12 procedure and candidacy qualifications.
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14 14. The GLA failed to hold a 2021 election for Board members as well, due to the
15 ongoing deadlock and division on the Board.

16 15. On June 23, 2021, Petitioners filed a Petition for Dissolution of Judicial Nonprofit
17 Corporation.
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19 16. On July 29, 2021, Respondent filed an Answer to the Petition.

20 17. The Court set a Case Scheduling Conference for August 13, 2021, after which the
21 Court entered an Order Setting Deadlines for selection of a Settlement Master or Mediator and to
22 conduct a Mediation or Settlement Conference.

23 18. On September 13, 2021, counsel filed a Joint Notice of Mediation, and the Court
24 issued an Order for the parties to mediate on October 4, 2021, with Tracy Axelberg.
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26 19. On October 18, 2021, Mr. Axelberg filed a Settlement Conference Report indicating
27 that the matter was fully settled.
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1 20. The Settlement Agreement between Petitioners and GLA includes the following
2 agreements:

3 “a. The parties’ attorneys will develop this memorandum of agreement into a resolution to
4 be implemented by the Board at a specially called meeting, as soon as possible after drafted,
5 reviewed, and approved by the parties’ attorneys.
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7 b. The Board will review and approve the resolution, with those Board members present at
8 the mediation agreeing to support and join the resolution.

9 c. The GLA membership shall be provided the opportunity to object or support the
10 resolution by filing its objection or support with the Court in writing and the Board resolution will
11 provide the membership with a deadline upon which to object or support.
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13 d. The resolution will provide in substance that the Board is proposing to the membership
14 the following:

15 i. The parties’ attorneys will form two successor entities, named GLA-North and
16 GLA-South, or reasonable substitutes.

17 ii. The boundaries of the new entities will be those provided as Exhibit A and B,
18 respectively, to the Glastonbury Association. (Exhibits omitted from this document)
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20 iii. Each entity will be recognized and identified as the successor entity to
21 Glastonbury, and each party will execute all necessary documents to form the successor entities
22 and assign the respective duties and obligations to make each effective.

23 iv. Common properties – the North and the South will execute mutual easement for
24 the other and the others’ members, consistent with historic uses and practices.
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26 v. Funds/accounts – Funds and accounts receivable will be allocated according to
27 the assessments/accounts attributable to properties within the North and South as described herein.
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1 Roads – existing contracts will remain in place and be paid, prior to allocation/division of the
2 funds/accounts.”

3 21. The Settlement further provided that, “[s]ubject to order by the Court implementing
4 the Board’s Resolution, (as consistent with this agreement), each North and South will self-
5 organize and hold an election to fill offices and carry out their business.”

6 22. The Settlement Agreement further provided that, “pending court hearing on this
7 agreement, the issue of who holds the separate offices will be held in abeyance, and during this
8 time, the highest uncontested officer, John McAlister, will conduct the business of Glastonbury and
9 officiate the board meetings.”

10 23. On December 1, 2021, Petitioners filed a Motion for Hearing to Consider Judicial
11 Approval of Parties’ Settlement Agreement.

12 21. The Court granted the Motion for Hearing and set the hearing for January 10, 2022.

13 22. Prior to, and on the day of the hearing, numerous landowners filed letters to the
14 Court, the vast majority of which were opposed to the Settlement Agreement. The arguments put
15 forth by those opposed included that: a) according to the GLA Covenants and Bylaws, more than
16 50% of the Membership Interests (landowners) of the GLA are required to vote to dissolve the
17 Association, and more than 50% of the Membership Interests were not represented nor did this
18 number of Members vote to approve the Settlement and Dissolution; b) contrary to the Covenants
19 and Bylaws, several members of the GLA Board of Directors have been serving for one or more
20 years past their term of office without being re-elected; c) landowners who indicated a desire to run
21 for positions on the GLA Board so indicated within the time allowed, but their notices went
22 unheeded; d) only a handful of landowners and less than half of the Board Members actually voted
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1 for and signed the Mediated Settlement; and e) landowners were not adequately informed by the
2 GLA board about the Petition or the Mediated Settlement.

3 23. Additionally, just prior to the January 10, 2021 hearing, the Court received 96
4 identical petitions signed by members of the Glastonbury Concerned Landowners, which all
5 opposed the division of the Glastonbury Landowners Association. These Petitions stated that the
6 members of the GLA should have the right to choose their own governance according to the GLA
7 Covenants and asked that the Petition for Dissolution of the GLA be dismissed and for the Court to
8 order an election for the Board of Directors.
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10 24. At the hearing, due to time constraints, the Court ordered that any GLA Members
11 who attended the hearing, and were unable to testify, could submit letters to the Court concerning
12 their input on the proposed Settlement Agreement, given they were unable to testify. The Court set
13 a deadline of seven days after the hearing for the submission of such letters to the Court.
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15 25. Approximately 13 additional letters were submitted to the Court post-hearing, most
16 in opposition to the Mediated Settlement. While many of the letters outlined more history to the
17 GLA than the Court previously had, the opposition letters included similar, if not the same,
18 objections as the letters submitted to the Court prior, or on the day of the hearing.
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20 Based upon the foregoing Findings of Fact, the Court now draws the following Conclusions
21 of Law:

22 CONCLUSIONS OF LAW

23 A. This Court has jurisdiction over the parties to this proceeding and the subject matter
24 at issue herein.

25 B. Venue is appropriate in Park County District Court pursuant to §35-2-729(1), MCA.
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1 C. All landowner members of the GLA are bound by the GLA Covenants upon the
2 purchase of their property within the GLA. The Covenants set forth a procedure for amendment,
3 which states as follows:

4 2.05 Amendments to Covenants. The covenants in this Declaration may be altered,
5 amended, modified, waived, abandoned or terminated in whole or in part at any
6 time by the affirmative vote of at least fifty-one percent (51%) of the Membership
7 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...

8 D. The Board Members that attended the mediation and reached the Settlement
9 Agreement, at most, did not have legal authority to be acting as Board Members for the GLA,
10 given the two missed annual elections and, at the very least, did not have credibility as those who
11 should be acting on behalf of the entire membership in making significant decisions.

12 E. Regardless of the legal viability of the Board Members that attended the mediation
13 and reached the Settlement Agreement, the significant settlement reached is a decision that must be
14 put to a vote of the entire Membership. This is so because Section 2.05 of the Covenants requires
15 such a vote by the Membership Interests of the Association in good standing at the time and
16 passage of a resolution to divide the GLA into legally distinct North and South Associations would
17 require an affirmative vote of at least fifty-one percent (51%) of said Membership Interests of the
18 Association in good standing at the time.

19 F. The record reflects that there are allegations regarding the nominations or
20 applications for the 2020 election for Board Members having been contrary to the requirements of
21 the Bylaws. It appears that some individuals attempted to submit applications to have their names
22 included as candidates and timely submitted the applications only to have them rejected from
23 placement on the ballot.
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1 G. This matter has come before the Court based upon the Petitioners' allegations of
2 deadlock and disfunction justifying dissolution. The Court concludes that further proceedings
3 regarding the Petition for Judicial Dissolution should be stayed, pending the conduct of an election
4 for the Board of Directors as well as a vote of the Membership Interests of the Association in good
5 standing as to whether the Resolution proposed by the Board following the Mediation should be
6 adopted by vote of the Membership.
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8 H. The Court further concludes that the appointment of a custodian pendente lite is
9 necessary to facilitate the election for the Board of Directors as well as the vote of the Membership
10 regarding the Resolution proposed by the Board following the Mediation.
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12 I. The custodian pendente lite will oversee and facilitate the matters set forth below.
13 The custodian pendent lite will consider the input of GLA counsel, Ryan Jackson, and in keeping
14 with the Covenants and the Bylaws of the GLA, oversee and facilitate the following:

- 15 1. Determination of the Board of Directors positions that are open for election;
- 16 2. Facilitation of the process for receiving applications from Members who wish
17 to be on the ballot for a Board of Directors' position.
- 18 3. Oversee and approve the preparation of the ballot, and the conduct of the
19 election, in keeping with the Covenants and Bylaws of the GLA;
- 20 4. Given that the GLA has not had Board elections for the past two years, the
21 custodian pendente lite may determine that a special election for Board
22 Members be held at a time other than the normal time of year for Board
23 elections;
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26 J. The custodian pendent lite will also oversee and facilitate a vote by the Membership
27 regarding the Resolution proposed by the Board following the Mediation which proposed a
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1 division of the GLA into two separate entities, Glastonbury North and Glastonbury South. The
2 custodian pendent lite will consider the input of GLA counsel, Ryan Jackson, in arriving at the
3 process for conducting this vote, in keeping with the Covenants and Bylaws of the GLA.
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5 K. The custodian pendent lite will be paid by the GLA and will function as, “an arm of
6 the Court” with judicial immunity.

7 Based upon the foregoing Findings of Fact and Conclusions of Law, the Court now enters
8 the following Order:

9 **ORDER**

10 **I.**

11 Further proceedings regarding the Petition for Judicial Dissolution are hereby stayed,
12 pending the conduct of an election for the Board of Directors as well as a vote of the Membership
13 Interests of the Association in good standing as to whether the Resolution proposed by the Board
14 following the Mediation should be adopted by vote of the Membership.
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16 **II.**

17 The Court will, by separate Order of the Court, appoint a custodian pendente lite, in
18 keeping with the Conclusions of Law set forth above. The custodian pendente lite will facilitate
19 the election for the Board of Directors as well as the vote of the Membership regarding the
20 Resolution proposed by the Board following the Mediation.
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22 **III.**

23 When the election for the Board of Directors as well as a vote of the Membership regarding
24 the Resolution have both been completed, the custodian pendente lite, and counsel herein shall file
25 a Status Report with the Court regarding the status of the case and what action by the Court, if
26 any, is needed.
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IV.

Counsel for the GLA, Ryan Jackson, shall ensure that a copy of this Order is provided to all Members in good standing of the GLA.

ELECTRONICALLY SIGNED AND DATED BELOW.

CC: Nicholas J. Lofing
Ryan Jackson