

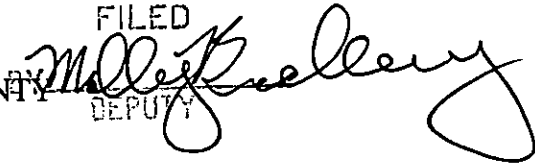
69

GLA Respondents & Members
PO Box 56
Emigrant, MT 59027
406-451-0033
Charlette.mizzi@gmail.com

PARK COUNTY
CLERK OF DISTRICT COURT
HOLLY BRADBERRY

2022 OCT -5 PM 3:43

FILED



DEPUTY

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DENNIS RILEY, WENDY RILEY,)
JERRY LADEWIG, JEFFREY LADEWIG,)
MARK SEAVER, ANDREA SEDLAK,)
MARTHA McALISTER, JOHN McALISTER,)

Petitioners,)

Cause No. 2021-101

GLA Respondents' & Member Brief
& Motion For Declaratory Judgement
Against Sept. 2022 Status Report

vs.

GLASTONBURY LANDOWNERS)
ASSOCIATION, INC.,)
Respondent(s).)

COMES NOW, GLA Board Respondents—Charlette Mizzi, Newman Broskowski, Gerald Dubiel, and GLA member(s); and (per Court Order dated Sept. 12, 2022) do hereby timely submit this Brief and attached Letters **Against** the Sept. 12, 2022 “Status Report.” This is also a “Motion For declaratory Judgment Against Sept. 2022 Status Report” for having many errors and contrary to GLA governing documents and elections.

BRIEF

BACKGROUND: Attached Court Order (Case # DV-21-101 dated Sept. 12, 2022) mentions the “Status Report” for 2022 GLA Board elections was signed and filed by former GLA Board President-John McAllister and Nels Swandel. The Court Order of February 2022 requires GLA

Board elections be conducted by Judge Nels Swandal “according to the GLA Governing documents.” This did not happen.

At the time of signing and filing of the Status Report September 12, 2022, GLA Board was never noticed or made aware of the contents of this Status Report that contains numerous errors, omissions. Swandal also exceeded his authority to arbitrarily and capriciously interpret and violate GLA numerous governing documents and alter election results. Attached letters from GLA Board Directors (Charlette Mizzi, Newman Broskowski, Gerald Dubiel) & two GLA landowners witness to facts and claims supporting Brief and Motion for Declaratory Judgement.

I. Status Report Contains Numerous Errors and Omissions:

1) Attached documents and witness letters show Swandal had no authority to erroneously interpret and violate numerous Covenants and Bylaws and alter election results. Such actions did fatally harm GLA elections and integrity; if the Status Report is not amended or revoked for just cause, as follows:

2) Status report in error claims (Status report, pg. 5) that a “majority of voters (126 of 229 or 55%) said YES” to the separation of North and South Glastonbury.

This is false. Only 126 members out of 407 members (or 31%) voted for separation. Also, these 126 votes to separate represents only 38% of the so called “333 eligible voters.” (Note: another 9 eligible voters from the list of 27 ballots would be 50.8% or less than 51% of votes cast that Swandal threw out and refused to count).

3) Swandal unilaterally decided not to have an election meeting as required per Bylaw V. B.. Swandal ignored this bylaw requirement to conduct a meeting and instead required members to cast votes ONLY by mail.

4) More importantly, GLA election results above were unilaterally altered based solely on Swandals’ interpretation of GLA **Bylaw V.F. Part 4** or **Bylaw Amendment A** that ONLY counts

member votes “in good standing who cast votes at the meeting” or “attending any Annual or Special Meeting.”

GLA Covenant 2.04 also says to “terminat[e] or modif[y] Covenants requires “affirmative vote of at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time.”

GLA Covenant 2.05 similarly says, “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.”

5) Swandal interpretation of GLA Bylaws also ignored pertinent **Covenants 2.04 and 2.05** above pertaining to the separation vote. For this Brief and this Declaratory Judgment Motion.

6) Respondents and members ask the Court to decide the following question: **Does separation issue (at vote) necessarily** require the Covenants be changed. Bylaws are in conflict with **GLA Covenants 2.04 and 2.05** because the separation vote requires GLA Covenants be “terminated or modified” or else “altered, amended, modified, waived, abandoned or terminated in whole or in part.”

7) **Bylaw Amendment D** reads, “...in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control.”

8) So if there is any question as to conflicts in the governing documents, then Covenants control and should apply to the separation votes requiring, “affirmative vote of at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time.”

9) Swandal exceeded his Court appointed authority to interpret GLA Covenants/Bylaws and alter election results. Swandal used erroneous interpretations of GLA Covenants and Bylaws to deny 27 votes against separation and deny a majority of votes (up to 60) for Board candidate Powell; which fatally altered election results against separation and denied Powell a seat on the GLA Board.

10) Swandal’s Status Report admits he “analyzed” the landowner list "to determine the members in good standing” by omitting members with “Outstanding Covenant violations" which altered and reduced the list of “members in good standing” by 27 votes as interpreted solely by Judge Swandal.**

This violated **Bylaw Amendment A that gives the GLA Board “sole authority to interpret the Bylaws and Covenants;” such as Covenant 3.19:

GLA Covenant 3.19. “Member of the Association in Good Standing. A member of the Association that is current in the payment of all assessments to the Association and is not in

violation of these covenants. A member in good standing is qualified to vote as provided herein and in the bylaws and rules of the Association.”

11) Furthermore of the 333 eligible voters, Attached witness letters also verify facts that members-David Lumberg, O’Connell, & Powell Gelderloos (and 24 other member ballot votes) were removed from the “quorum” and that “members in good standing” or member votes were denied by Swandal and not the Board.***

***This is contrary to **Bylaw V. E.** requirement that only GLA Board “authorize[s] votes of all Members...” **for all annual meeting elections and quorum.**

12) Plus Status report (pg 2) admitted Swandal threw out 27 ballot votes (most all against separation); this altered the votes and “record of the Association” and “quorum” without Board approval as contrary to Bylaw V. Part E. (below):

Bylaw V. Part E. “total authorized votes of all Members of record of the Association shall constitute a quorum at all meetings of the Members” and elections.

13) Swandal alone interpreted “Covenant violations” and Covenant 3.19. “Member of the Association “in Good Standing” to deny 27 member ballots against separations. This was contrary to **Bylaw Amendment A** that gives the GLA Board “sole authority to interpret the Covenants and Bylaws.” And **Bylaw V. Part F.** “Each Member in good standing as defined in the Covenants... shall be entitled to cast the vote(s) appurtenant to the Member’s Membership Interest(s)...”.

14) Status report in error (page 2) claims there were “7 candidates in South Glastonbury.” But attached South Glastonbury “2022 GLA Election Ballot” and Board Candidate Bios” both show there were eight Board candidates-not 7.

15) Status report in error also omits the following facts taken from Witness letters which show: GLA Board voted and approved Powell Gelderloos to be on this ballot as a Board candidate; Powell was one of eight candidates added to the GLA election ballot for South Glastonbury “2022 GLA Election Ballot” and candidate Bios (with Powell Gelderloos name on both) mailed and emailed to all members in South Glastonbury; Powell Gelderloos received a majority of election ballot votes; Swandal refused to count up to 60 ballot votes for Powell Gelderloos.

16) Swandal violated member rights per B Bylaw V. Part A through F to toss out member votes for Powell Gelderloos AFTER GLA Board voted to allow Powell to be a candidate on the GLA Ballot.

17) Swandal thus arbitrarily and capriciously without authority altered election tally results to strike and omit dozens of votes for Powell; which actions omitted from the Status Report fatally harm election results and integrity of the report.

18) Status Report Signature by John McAllister is absent authority to sign by GLA Board. This is according to attached witness letters that said none of the 11 other GLA Board members ever saw the Status Report before filing; and none of the 11 GLA Board members ever authorized McAllister to sign it either. Witnesses say John McAllister unilaterally acted alone without Board authority when he secretly reviewed, signed, and approved filing of the Status report absent any notice, review, input, or Board vote and absent required Board authority to sign the Status Report.

19) The Status report signed by McAllister was thus NOT “authorized by the Board of Directors” in violation of Bylaw VII.E..

20) Also, McAllister’s actions to sign and approve for filing the Status Report without Board knowledge and permission is also contrary to per Bylaw VI.B (below)., “Directors shall in all cases act as a Board... and shall act by majority vote of those members...”

21) For Declaratory Judgement Motion; Respondents and members ask the Court to agree that McAllister’s signature on the Status Report filing is not valid for violation of **Bylaw VII. E.** (below), because he failed to first get required authority majority vote from the GLA Board to sign it.

GLA Bylaw VII.E.; GLA Board “President shall sign all certificates, notes, negotiable instruments, deeds, contracts, mortgages, agreements and other instruments of the Association as authorized by the Board of Directors.”

GLA Bylaw VI.B. “General Powers and Duties. The business and affairs of the Association shall be managed by the Board of Directors. Such Directors shall in all cases act as a Board which shall have the powers and duties necessary for the administration of the affairs of the Association... The Board shall be regularly convened and shall act by majority vote ...unless provided otherwise herein or in the Articles of Incorporation...”

GLA Bylaw VI. F., “All business of the Board other than confidential matters (in the discretion of the Board) shall be conducted in an open meeting...”

22) These **Bylaw VI. B. &F** (above) requires the “Board shall be regularly convened and shall act by majority vote” “in an open meeting.”

Obviously the Status Report was not considered a “confidential” matter, since this document was filed with the Court available for public access. Yet, attached witness letters show McAllister secretly assisted in the creation, review, approval, signing, and filing of this Status Report absent any “open meeting” or notice to landowners. McAllister appeared to hide all his actions from members (& Board) at all times contrary to these **Bylaws VI. B & F** above.

23) Finally, voting for “separate boards and organizations,” as the vote said, is not even legal!

The attached ballot question given to every landowner asked this question: “Vote on the separation question...North and South Glastonbury should SEPARATE into two organizations with independent boards.”

This question above on every election ballot appears to be deliberately or negligently false and misleading question. The “boards” would NOT “separate” because separation does not adequately describe what the members are voting for or against. The members were not voting for separation of the Board and organization. See attached Brief and Motion for Time Extension.*

*Attached “Brief Against Separation of the GLA Organization...& Extension of Time” motion is **incorporated hereby as if fully stated herein.**

SUMMARY

Respondents are all members of the Glastonbury Landowners Association, Inc. (the GLA). Attached letters highlight legal issues that could harm Respondents as a direct result of not granting Declaratory Motion relief due to election errors and errors in the Status report. This is also make this court aware of potential legal claims that can be **avoided** by this Motion for Declaratory relief.

CLAIMS FOR RELIEF:

- 1) For Declaratory Judgement saying separation issue is deemed to have NOT passed or else separation question on the GLA ballot was legally defective having inadequate language;
- 2) For Declaratory Judgement declaring all GLA ballots and votes should be counted according to Covenants 2.04 & 2.05;
- 3) For Declaratory Judgement declaring McAllisters signature on Status Report invalid;

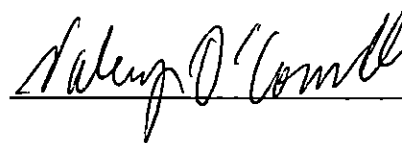
4) For Declaratory Judgement declaring it was not lawful for the removal of Powell Gelderloos votes (AFTER he was added to the South Glastonbury Election Ballet) and votes were casts; which dissolutions voters and prejudices their votes wasted and not counted.

5) For any other Declaratory relief for justice as warranted.

DATED this 5th day of October, 2022.



Charlotte Mizzi for Respondents



Val O'Connell for Members

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties this day first class mail with exhibits on the following day to:

Nicholas J. Lofing-Petitioner Attorney
GARLINGTON, LOHN & ROBINSON, PLLP 350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
njlofing@garlington.com



Charlotte Mizzi

GLASTONBURY LANDOWNERS ASSOCIATION, INC.
2022 SOUTH GLASTONBURY BALLOT

Each parcel, lot or tract is allotted one ballot. Landowners who own multiple parcels receive one ballot for each lot they own. **Return each ballot separately.**

GLA Board Candidates - Vote by checking the boxes for up to six different candidates -
The three candidates receiving the most votes will serve 2-year terms; the 3 candidates receiving the next highest number of votes will serve 1-year terms.

Pouwel Gelderloos

Niel Kremer

Jeffrey Ladewig

Dennis Riley

Alicia Roskind

Mark Seaver

Andrea Sedlak

Scott Stomierowski

(Write-in Candidate)

(Write-in Candidate)

(Write-in Candidate)

(Write-in Candidate)

Ombudsman - Vote for one Ombudsman by checking the box - (1-year term)


Jerry Ladewig

(Write-in Candidate)

Vote on the Separation Question - Check one box

North and South Glastonbury should REMAIN as they are now,
in a single GLA with a single board.

North and South Glastonbury should SEPARATE into two organizations,
with independent boards.

See Next Page for Detailed Instructions on Submitting Your Ballot 

Charlotte Mizzi

60 Taurus Rd. P.O. Box 474, Emigrant, MT 59027

Phone No. 406-333-4643

Honorable Judge Gilbert
Judicial Court
424 Calendar St.
Livingston, MT 59047

Dear Hon. Judge Gilbert

Today, October 3, 2022 I was told that something was filed in court. I had made inquiries and in response my neighbors' the O'Connell's emailed me a copy they secured from the court of an 'ORDER ALLOWING BRIEFING' dated, Mon. Sept 12, 2022 (Cause No. DV 21-101) Riley et al (petitioners) v. Glastonbury Landowners Association, Inc. (respondent). At the time I was still a board member until a new board was placed which took place on September 27, 2002.

This was the first time I saw the court order. According to the order the Status Report was signed and filed by Wm. Nels Swandal and John McAlister on September 6, 2022 The court allowed (1) for the briefing to be allowed regarding the matters raised in the Stats Report. The order further (2) states that briefs shall be filed within thirty (30) days from the date of this Order.

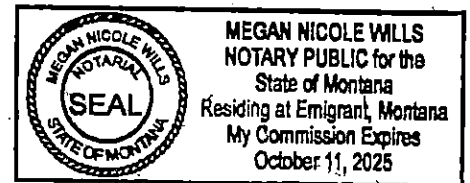
Other than John McAllister, no GLA Board members have seen the matters raised in the status Report dated September 6, 2022 signed by him and Nels Swandal. This is a direct violation of our GLA Bylaw Article VI.F. That says, "All business of the Board other than confidential matters (in the discretion of the Board) shall be conducted in an open meeting." And President John McAlister acting also without our GLA Board members' permission or notice also violates state law and officer authority given by GLA Bylaw Article VII. E. That says, "The President shall preside at all meetings of the Board of Directors and Members. The President shall sign all certificates, notes, negotiable instruments, deeds, contracts, mortgages, agreements and other instruments of the Association as authorized by the Board of Directors." I have served on the GLA board for 15 years on and off. I have been President and as of late the Secretary to the Board. In my professional career I have served in municipal government for 27 years in positions of Rent Leveling Administrator, Chief of Staff for the Mayor and Public Works Director. I worked with several boards throughout my years of service. I expect honesty and fairness in the court, elections and board activities. This has been the worst board I worked with. They violated their own governing documents and rules. On more than one occasion they ignored advice from the board's attorney.

What can we do with this problem of not being notified of this proceeding? I can see only one option that is to send copies of the Status Report and allow another 30 days to provide briefs. As of September 27th there is a new board. Since the Status Report was filed on September 6, 2022 it is only fair that the previous board and the new board respond to the briefs.

Thank You,

Respectfully Submitted
Charlotte Mizzi
Charlotte Mizzi

Subscribed and sworn to before me in my
Presence, this 4th day of October
2022, a Notary Public in and for the
County of Park State of Montana
Megan Nicole Wills
(Signature) Notary Public
My commission expires Oct 11, 2025



October 4, 2022

Honorable Judge Gilbert
414 Calendar Street
Livingston, MT 59047

Dear Judge Gilbert,

My name is Gerald Dubiel and was a GLA board member on January 6, 2022. I was appalled to find out that an order was given to allow a briefing regarding the Status Report signed and filed by Wm. Nels Swandal and John McAlister. I was never notified or approved a Status Report to be filed with the Court, no less of the order to file briefs within 30 day from September 12, 2022.

I was one of the board members who filed for Judicial Relief because of the shenanigans of some board members during the 2020 election. These are the same board members who petitioned the court to separate north and south Glastonbury. The attorney for the Glastonbury Landowners Association, Seth Cunningham, advised the board to redo the election process because three board members had a conflict of interest when they removed 5 candidates from running.

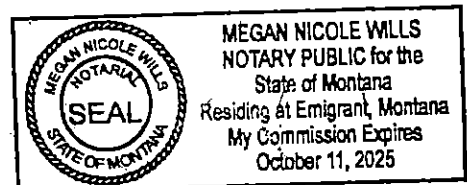
John McAlister was one of the board members who removed the candidates in 2020 and also should have informed and got board approval regarding filing a Status Report with the court. This is in violation of our governing documents.

I am requesting that this court order be stopped until proper proceedings are followed.

Sincerely,

Gerald Dubiel, PLS

Cc: John McAlister
Nels Swandal



Subscribed and sworn to before me in my
Presence, this 4 day of October
2022, a Notary Public in and for the
County of Park State of Montana
Megan Nicole Wills
(Signature) Notary Public
My commission expires Oct 11, 2025

Regarding court order allowing briefing

Inbox



Newman Brozovsky

10:06 AM (53
minutes ago)

to swandal.law, Ryan, charlottemizzi

Dear Judge Gilbert. Judge Swandel and Ryan Jackson.

Court order allowing briefing (Cause No. DV 21-101) was filed on Sept 12th yet the board was kept completely in the dark about this. We just learned about this on Sunday October 2nd and not from John. Why??

Are they attempting to circumvent the covenants that clearly state it takes 51% of members in good standing to Pass

GLA Covenant 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."

Maybe they think they can get you to apply the bylaws to change the covenants. If you read the bylaws there is nowhere in them giving the bylaws authority over changing the covenants while the covenants are very clear exactly what it takes to change them.

All the boards have known that it was much harder to make changes to the covenants than it was to change bylaws which they just changed a couple years ago just before we got into this mess.

No has ever claimed that the bylaws could be used to change the covenants.

So once again I'm asking you to follow our governing documents in your decision. which clearly states they did not get enough votes to pass.

I'm sorry to see what looks like shenanigans happening behind our backs. Though for all I know this might be nothing, it does appear to be an attempt to hide something from the board and the community.

Thank you for looking into my concerns.

Sincerely yours,

Newman Brozovsky

Former GLA President

PARK COUNTY
CLERK OF DISTRICT COURT
MOLLY BRADBERRY
9-14-2022

2022 SEP 19 AM 11:42

DV 21-101

Motion to the Court to request a stay on a decision of Judge Brenda Gilbert's on the South Glastonbury Landowners Association election.

FILED

BY *[Signature]*
DEPUTY

- 1- A candidate (Pouwel Gelderloos) was recognized to run for a position on the Glastonbury landowners association Board.
- 2- Bio's of all candidates were send out to the GLA membership and returned to Judge Nels Swandall (including Pouwel's) with the mail-in voting envelopes.
- 3- Judge Nels Swandall was to oversee the election and preform the initial count.
- 4- When the count was completed by judge Swandall, the candidacy and vote count for Pouwel were not included.
- 5- Pouwel's exclusion was not communicated to him nor to anyone else of the GLA membership and only came to light after the count was done and which was then only emailed to a few.
- 6- Votes for candidate Pouwel Gelderloos were nulified or given to another cadidate, somewhere during the count.
- 7- On this day, I am filing a motion to the court for an immidiate STAY on the decision by Judge Brend Gilbert, to ratify the votes for South Glastonbury, so that the removal of Pouwels candidacy, after the votes for him were already cast, is fully investigated on legality and in accord with the Glastonbury Landowners Association Covenants.

Respectfully: Pouwel Gelderloos



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served upon the person(s) named below by :

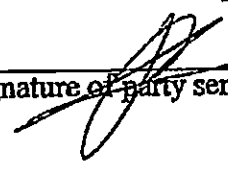
first-class mail postage pre-paid at the address set forth below on 9-19-22 (date).

hand delivery to the person named below on _____ (date).

placing into the box of counsel at the Clerk of District Court office on _____ (date).

Name Ryan Jackson
Address 725 E Mendenhall
Bozeman MT 59715

Name Shandal Law
Address 305 E Lewis St
Livingston MT 59047


P. Pelder
(Signature of party serving the document)

Nick Lofing
Po Box 7909
Missoula
MT 59807