

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

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

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

CAUSE NO. DV 21-101

**ORDER REGARDING CUSTODIAN
PENDENTE LITE'S STATUS REPORT,
RESPONSES THERETO, AND THE VOTE
ON THE BOARD'S RESOLUTION**

17 The Custodian Pendente Lite, Hon. Wm. Nels Swandal, (Ret.) and John Mcalister filed a
18 Report to the Court on September 6, 2022. The Report suggested that the Court might allow
19 briefing regarding the vote to separate North and South Glastonbury into separate entities. The
20 Court entered an Amended Order Requiring Mailing of status Report and Allowing Extension of
21 Time for Responsive Briefing on October 19, 2022. The Order allowed an extension of time for
22 Briefs to be filed in response to the September 6, 2022 Report to the Court of sixty days from the
23 date that a Certificate of Mailing confirmed mailing to the members in good standing. The date of
24 mailing set forth in said Certificate was November 12, 2022. Thus, the response briefing deadline
25 was extended to January 12, 2023.
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1 The Court has reviewed the Court's Findings of Fact, Conclusions of Law and Order
2 Regarding Petition for Judicial Dissolution of Nonprofit Corporation entered on February 25, 2022,
3 the Status Report to the Court filed September 6, 2022, the Briefs and other documents filed in
4 response to said Status Report to the Court, together with the records and files herein.
5

6 ACCORDINGLY, GOOD CAUSE EXISTS FOR ENTRY OF THE FOLLOWING
7 DECISION:

8 The Court's Findings of Fact, Conclusions of Law and Order Regarding Petition for
9 Judicial Dissolution of Nonprofit Corporation entered on February 25, 2022 stayed the proceedings
10 herein pending the conduct of an election for the Board of Directors as well as a vote of the
11 Membership Interests of the Association in good standing as to whether the Resolution proposed
12 by the Board following the Mediation should be adopted by vote of the Membership. The Court's
13 Order also provided that a custodian pendente lite would be appointed by separate Order of the
14 Court. The custodian pendente lite would facilitate the election as well as the vote concerning the
15 Resolution. Hon. Wm. Nels Swandal, (Ret.) was appointed, by separate order, to serve as the
16 custodian pendente lite.
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19 The Status Report to the Court filed September 6, 2022, set forth the results of the election
20 for the Board of Directors. As to the question of approval of the Board's Resolution following
21 Mediation that would divide Glastonbury into two independent units, Glastonbury North and
22 Glastonbury South, the vote was 126 in favor of the resolution and 103 against it.
23

24 The Status Report addressed the difference in the vote needed to amend the Bylaws of the
25 Glastonbury Landowners Association versus the vote needed to amend the Covenants. To amend
26 the Bylaws, the vote must equal or exceed fifty-one percent (51%) of the total Membership
27 Interests of the Members in good standing who cast votes at the meeting to pass the proposed
28

1 matter. To amend the Covenants, Subsection 2.05 requires the affirmative vote of at least fifty-one
2 percent (51%) of the Membership Interests of the Association in good standing at the time.

3 The results of the voting were that the majority of voters voted for the Resolution that
4 would divide Glastonbury into two separate entities- of the 229 that voted, 126 voted yes to the
5 separation, which is 55% of those voting. This would satisfy the requirement of the By-laws for
6 passage of the Resolution. However, the number of votes in favor of the Resolution did not rise to
7 the level of fifty-one percent (51%) of the total Members in good standing. Specifically, 126 of the
8 333 Members in good standing voted in favor of the Resolution, which does not satisfy the votes
9 needed to amend the Covenants.

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11 In the Court's Findings of Fact, Conclusions of Law and Order Regarding Petition for
12 Judicial Dissolution of Nonprofit Corporation, the Court conclude, at Conclusion of Law E. that:

13 [T]he significant settlement reached is a decision that must
14 be put to a vote of the entire Membership. This is so
15 because Section 2.05 of the Covenants requires such a vote
16 by the membership Interests of the Association in good
17 standing at the time and passage of a resolution to divide the
18 GLA into legally distinct North and South Associations
19 would require an affirmative vote of at lease (sic) fifty-one
20 percent (51%) of said Membership Interests of the
21 Association in good standing at the time.

22 The Court already concluded that the vote as to the Resolution to separate Glastonbury into distinct
23 entities requires amendment of the Covenants. Accordingly, the vote needed to pass such a
24 proposed amendment is fifty-one percent of the Membership Interests in good standing at the time
25 of the vote. The Resolution to split the GLA did not pass.

26 The Court's Conclusion E requiring that the Covenants be amended to effectuate the split is
27 supported by the Covenants themselves and other applicable legal authority. Since the Glastonbury
28 Landowners Association is a Montana nonprofit corporation, separating the North and South has

1 the effect of dissolving the current Association and requires the creation of two new legally
2 independent Associations- Glastonbury North and Glastonbury South. Pursuant to § 35-2-721
3 (1)(b), MCA, dissolution of a nonprofit corporation requires a vote of two-thirds of the votes cast
4 or a majority of the voting power, whichever is less, unless the articles or bylaws require otherwise.
5 The current Association Bylaws do not require a greater number of votes for dissolution.
6 Therefore, since the Resolution here did not receive two-thirds of the votes cast or a majority of the
7 voting power, the Resolution did not have the requisite votes to dissolve the non-profit corporation.
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9 In order to accomplish a division of the Association into two distinct entities, Glastonbury
10 North and Glastonbury South, the Covenants would need to be amended in a number of other
11 ways. These include:

- 12 1. 3.01, the definition of the “Association”;
- 13 2. 3.08, the definition of a “Member”;
- 14 3. 3.19, 3.20, the definition of, “a Member of the Association in Good Standing and
15 Membership Interest”;
- 16 4. 10.01, the Association’s Authority would need to be amended to reference the distinct
17 entities;
- 18 5. 10.02, Enforcement of Covenants would need to be amended to allow each distinct
19 entity to enforce the Covenants on behalf of that entity;
- 20 6. 10.04 Association Membership would need to be modified such that a landowner would
21 be identified as a Member of either Glastonbury North or Glastonbury South;
- 22 7. 11.01 Assessments would need to be modified such that payments by a Member are
23 made to the proper distinct entity;
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- 1 8. 11.03, 11.04 Annual Community Assessments and Special Assessments would need to
2 be modified to reflect those Assessments being paid to the proper distinct entity;
3 9. 11.05 Accounting, Allocation and Use of Funds would need to be emended to allow for
4 funding of the distinct entity; and
5 10. 11.06 Effect of Nonpayment of Assessment would need to be modified to reflect
6 delinquency as to the distinct entity to which payment is owed.
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8 Further, the Covenants would have to be amended to address the recreation and common
9 land easements set forth in Section 7 of the Covenants. Necessary documents would need to be
10 recorded to ensure that the platted road easements would be clarified to provide for the two
11 distinct legal entities and the use by the Members of each.
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13 The voting standard that needed to be met to pass a Resolution to split the Glastonbury
14 Landowners Association is that found in the Covenants. The vote that was conducted did not
15 accomplish a successful affirmative vote under the requirements of the Covenants.
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17 **BASED UPON THE FOREGOING DECISION, GOOD CAUSE EXISTS FOR ENTRY**
18 **OF THE FOLLOWING ORDER:**

19 **ORDER**

20 **I.**

21 The Resolution proposed by the Board proposing the division of the Glastonbury
22 Landowners Association into two separate entities, Glastonbury North and Glastonbury South,
23 failed to pass as it did not receive the number of affirmative votes required to effectuate an
24 Amendment to the Covenants.
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II.

The Board of Directors of the Glastonbury Landowners Association shall ensure that a copy of this Order is sent to each Member of said Association in good standing as of the date of this Order within fourteen days from the date of this Order. The individual depositing the Orders in the US Mail shall file a Certificate of Service within five days thereafter certifying that such mailing has taken place.

ELECTRONICALLY SIGNED AND DATED BELOW.

CC: Board of Directors of GLA Sent via US Mail
Nicholas J. Lofing
Ryan Jackson
Hertha L. Lund
Hon. Wm. Nels Swandal Copies Given