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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DENNIS RILEY, WENDY RILEY,
JERRY LADEWIG, JEFFREY
LADEWIG, MARK SEAVER, ANDREA
SEDLAK, MARTHA McALISTER,
JOHN McALISTER, together with and on
behalf of other lot owners,

Petitioners,

v.

GLASTONBURY LANDOWNERS
ASSOCIATION, INC.,

Respondent.

Cause No. DV-21-101

REPLY BRIEF IN SUPPORT OF
MOTION TO STRIKE GLASTONBURY
CONCERNED LANDOWNERS
COMMITTEE’S RESPONSE TO
STATUS REPORT

COMES NOW, the named Petitioners in the above captioned matter, by and
through counsel, and file this Reply Brief in Support of their Motion to Strike
Glastonbury Concerned Landowners Committee’s Response to Status Report (filed on or

about January 13, 2023).

PROCEDURAL HISTORY & LEGAL AUTHORITY

On October 18, 2022, this Court entered an order allowing further landowner filings following the court-ordered and court-supervised election: “any member in good standing, or an attorney acting on such member’s behalf, may file a Brief in response to any issue addressed in said Status Report filed September 6, 2022.” Order Req. Mailing Status Report Allowing Ext. Time for Resp. Briefing at 2, Oct. 18, 2022.

On January 9, 2023, an anonymous, unassociated, and fictional “committee” under the name of “Glastonbury Concerned Landowners Committee” filed a Response to Status Report. The unidentified “Committee” alleges, without documentation or explanation, that it represents more than eighty (80) landowners.

On January 11, 2023, the Glastonbury Landowners Association, by its counsel Ryan Jackson, filed a joinder in the Committee’s filing.

On January 13, 2023, Petitioners filed a Motion to Strike the “Committee’s” filing, as failing to identify a real party in interest and failing to identify its alleged 80 persons as “member[s] in good standing” under this Court’s September 6, 2022 Order.¹

On January 20, 2023, the “Committee” filed its Response to Petitioner’s Motion to

¹ “The first sentence of Rule 17(a), M.R.Civ.P. requires that an action be brought in the name of the party who possesses the substantive right being asserted under the applicable law.” *First Sec. Bank v. Gary*, 221 Mont. 329, 333, 718 P.2d 1345, 1347 (1986).

Strike. The “Committee’s” Response fails to address the real-party-in-interest deficiency as to its purported members, except Charlotte Mizzi. The “Committee’s” Response provides only that Ms. Mizzi “is a member in good standing of the GLA and she meets the standard for filing” (i.e., land ownership). Resp. Petitioners’ Mot. to Strike at 2, Jan. 20, 2023 (“Committee’s Response”).

The “Committee’s” Response also glosses over a prior filing, the Declaration of Charlotte Mizzi, which was made on January 13, 2023 (“Mizzi First Declaration”). The Mizzi First Declaration adds nothing to cure the deficiencies in the “Committee’s” court filing. The Mizzi First Declaration provides only that Valerie O’Connell, Ms. Mizzi, and others organized the Committee and communicated with people on an attached list. Decl. Charlotte Mizzi ¶¶ 3-4, Jan. 13, 2023.

The Mizzi First Declaration does not indicate the people listed are (1) members/landowners in the GLA, (2) in good standing with the GLA, (3) “members” of the “Committee”, or even that they (4) currently endorse the First Declaration, endorse the “Committee” court filing(s), and/or support maintaining a single GLA. Petitioners have reasons to challenge the representations vis-à-vis the list, but given that the Mizzi First Declaration does nothing more than say “we...have communicated with the people”, it is unnecessary to respond further. Last, however, Petitioners point out that Ms. Valerie O’Connell is an adjudicated nuisance litigant and not permitted to participate in court proceedings without judicial oversight. *See* Petitioners’ Combined Resp. Memo.

Improper Oct. 5 Filings & Mot. to Strike at 4, Oct. 11, 2022, Ex. A: FOFCL Ord. Mot. Pls. & Children Declared Vexatious Litigants, Mar. 13, 2017.

CONCLUSION

Petitioners now renew their motion to strike the “Committee’s” January 9, 2023 filing in its entirety. Petitioners further renew their motion for separation of the GLA into two separate, independent sub-HOA’s known as “North Glastonbury” and “South Glastonbury” or the equivalent. This Court has statutory and equitable authority to so order, as fully briefed previously. The Court has appointed a Custodian Pendente Lite and oversaw a court-ordered special election, with the majority of landowners electing separation. That vote met the criterion for amending the Bylaws governance structure. Separation does not affect the Covenants, as Covenant 10.03 authorizes the Association to assign all Rights, Powers, and Responsibilities to a successor organization.

Petitioners request the Court grant the separation relief requested, which was voted on and ratified by the GLA Board after formal, court-ordered mediation, and which was elected by the GLA voting membership upon a special court-supervised election.

DATED this 1st day of February, 2023.

/s/ Nicholas J. Lofing
Attorneys for Petitioners

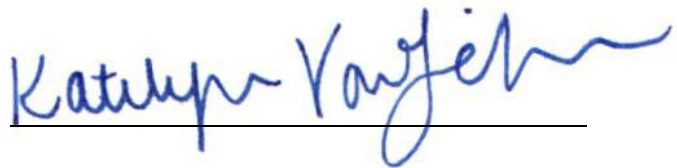
CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2023, a copy of the foregoing document was served on the following persons by the following means:

_____ Hand Delivery
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CERTIFICATE OF SERVICE

I, Nicholas J. Lofing, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 02-01-2023:

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Electronically signed by Katelyn Van Gilder on behalf of Nicholas J. Lofing
Dated: 02-01-2023