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*Attorneys for Glastonbury Concerned Landowners Committee*

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

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**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,

vs.

**GLASTONBURY LANDOWNERS  
ASSOCIATION, INC.,**

Respondent.

Cause No. DV 21-101

**RESPONSE TO STATUS  
REPORT**

COMES NOW, Glastonbury Concerned Landowners Committee, a Committee representing more than eighty (80) landowners, by and through their attorneys of record Hertha L. Lund, and Christopher T. Scoones, of Lund Law, PLLC, and file this brief in response to the Court’s October 19, 2022, Order stating: “Within sixty days from the date of the Status Report is mailed to the members in good standing, 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.”

**I. INTRODUCTION**

On March 8, 2022, the Court issued an “Order Appointing Custodian Pendente Lite.” Doc. No. 56. In the Order, the Court concluded that the appointment of a

custodian pendente lite is necessary to facilitate the election for the Board of Directors as well as the vote on a resolution to divide the GLA into two separate entities, Glastonbury North and Glastonbury South. The Custodian was ordered to conduct the votes “in keeping with the Covenants and the Bylaws of the GLA.” *Id.*, 1-2.

Ballots were mailed to all Glastonbury landowners. *Status Report*, 2. The ballot contained the following language regarding the resolution to separate the GLA:

Vote on 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 new organizations, with independent boards.

Votes for the resolution to split were tallied:

Combined Separation Vote:	
Separate:	126
<u>Remain as-is:</u>	<u>103</u>
Total:	229

*Id.*, 4. The Custodian determined that there “were 333 properties in good standing,” and eligible to vote. *Id.*, 2. The 126 votes in favor of splitting the GLA represent fifty-five percent (55%) of votes cast (126/229) but only thirty-eight percent (38%) of the 333 eligible voting members in good standing (126/333). *Id.*, 5. The Custodian concluded that this result presented an “ambiguity” because, “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.” *Id.*, 5. The resolution to separate would pass if the Bylaws were followed (the total number of qualifying votes exceeds 51%) but fail if the Covenants are followed (less than 51% of the members in good standing voted affirmatively).

The Custodian was wrong to conclude that these results created a conflict because, “in the case of any conflict between the Covenants and these Bylaws, the

Covenants shall control.” Bylaws, Article XIII, Section D. Furthermore, the Custodian overlooked this Court’s conclusion that the Covenant’s higher voting standard must be followed. Doc. No. 55, COL ¶ E.

## II. APPLICABLE LAW

### A. Findings of Fact, Conclusions of Law and Order Regarding Petition for Judicial Dissolution of Nonprofit Corporation (Doc. No. 55)

- All landowner members of the GLA are bound by the GLA Covenants upon the purchase of their property within the GLA. The Covenants set forth a procedure for amendment, which states as follows:  
[2.05 Amendments to Covenants]

COL, ¶ C.

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

COL, ¶ E.

### B. Findings of Fact, Conclusions of Law and Order Regarding Petition for Judicial Dissolution of Nonprofit Corporation (Doc. No. 55)

This Order concluded that the resolution to split the GLA requires applying the Covenants’ voting standard:

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

COL ¶ E (emphasis added).

### C. Order Appointing Custodian Pendente Lite (Doc. No. 56)

This Court’s Order Appointing Custodian Pendente Lite directed the Custodian to: “Oversee and approve the preparation of the ballot, and the conduct of the election, in keeping with the Covenants and Bylaws of the GLA.”

## **D. GLA Covenants**

- “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.”

## **E. GLA Bylaws**

The Bylaws of Glastonbury Landowners Association, Inc., provide:

- Except as otherwise provided herein, the presence in person or by proxy of Members having twenty-five (25%) of the total authorized votes of all Members of record of the Association shall constitute a quorum at all meetings of the Members. Meetings of the Association or action taken by written mail ballot shall be proper only if a quorum of the Members is established either in person or by written mail ballot or any combination of the foregoing.

Article V, Section E.

- Each Member in good standing as defined in the Covenants, or any person designated by them to act 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. For purposes of the tabulating the written vote and consent of the Members of the Association, it is hereby provided that:
  1. Each Membership 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;  
\* \* \*
  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.”

Bylaws, Article V, Section F.

- In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control.

Bylaws, Article XII, Section D.

### III. ARGUMENT

The Custodian left “to the court to decide if the vote to separate is sufficient.” Doc. No. 62, 6. In so doing, the Custodian overlooked the Court’s conclusion that the resolution to split the GLA requires meeting the Covenant’s voting standard. Doc. No. 55, COL ¶ E. The voting results did not satisfy the Covenant’s higher voting standard and therefore, the resolution to split the GLA did not pass. Furthermore, the vote did not satisfy the statutory voting standard for dissolution of a nonprofit corporation by its members.

The intent of the Covenants was to create a community landowners association:

Whereas, the owners of the property in the Community of Glastonbury have agreed that it would be in the best interests of all parties to create and empower a new self-governing structure through a community landowners association and to make comprehensive amendments to the Declaration of Covenants....

\* \* \*

Whereas, the undersigned owners (including the Grantors) of at least fifty percent (50%) of the parcels described on Exhibits “A” and “B” attached to the Declaration of Covenants, together with any additions thereto, wish to alter, amend, modify and supersede the Declaration of Covenants, in its entirety through the adoption of the following Restated Declaration of Covenants....

Covenants, 2. These above recitals show that creating the GLA required “comprehensive amendments to the [Covenants].” *Id.* Ergo, splitting the GLA must also require following the governing statutes to dissolve the GLA non-profit, “altering, amending, modifying and superseding” the Covenants, and following the governing statutes for dissolution of non-profits.

#### **A. The Resolution to Separate Did Not Pass.**

The Custodian incorrectly perceived that the results of the vote to separate the GLA created a conflict between the Covenants and the Bylaws because the separation involves “changing the Bylaws or changing the Covenants,” which have two different

voting standards. Doc. No. 62, 5. This perceived conflict is easily reconciled by the plain language of the Bylaws:

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control.

Bylaws, Article XII, Section D. Thus, if the resolution to split created a conflict between the voting requirements to amend the Bylaws and the voting requirements to amend the Covenants, the voting requirements of the Covenants trump those of the Bylaws.

Furthermore, this Court already concluded that the settlement agreement amends the Covenants and therefore, in accordance with Section 2.05 of the Covenants, “must be put to a vote of the entire Membership.” Doc. No. 55, COL ¶ E (emphasis added). Section 2.05 of the Covenants requires “the affirmative vote of at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time.” Covenants, 2.05. The vote was only 126 of 333 or thirty-eight (38%) of the total members in good standing, which means the resolution to split the GLA failed. The fact that a majority of votes were cast in favor of splitting the GLA is immaterial because a majority of Members in Good Standing did not vote in favor of the resolution.

The Custodian, in framing the resolution to split as a question of amending the Bylaws and/or the Covenants, overlooked the Court’s conclusion that the Covenant’s higher voting standard applies. Accordingly, this Court has answered the Custodian’s question and the resolution to split the GLA failed to pass.

**B. The Resolution to Separate Improperly Dissolves the GLA.**

The GLA is a Montana nonprofit corporation. Covenants, 3.01. The resolution voted on by the Members to separate has the effect of dissolving the GLA and creating two new associations: Glastonbury North and Glastonbury South. Doc. No. 55, FOF ¶ 20. Unless the articles or bylaws require otherwise, by statute, dissolution of a nonprofit corporation by its members is accomplished “by two-thirds of the votes cast or a majority of the voting power, whichever is less.” § 35-2-721(1)(b), MCA. The GLA’s

Bylaws do not require a greater vote for dissolution. Therefore, the statutory voting standard of two-thirds applies.

Here, the resolution to split did not receive two-thirds of the votes cast or a majority of the voting power. Only fifty-five percent (55%) of votes cast (126/229) and thirty-eight percent (38%) of the voting power (126/333) were in favor of splitting the GLA. Therefore, the statutory requirement for dissolution of a nonprofit corporation was not satisfied by the vote and the GLA cannot be dissolved based on the results of the Custodian's ballot.

### **C. Following the Covenants**

The Court said the proposed resolution to split the GLA has the effect of dissolving the GLA and creating two new associations: Glastonbury North and Glastonbury South. Doc. No. 55, FOF ¶ 1. The Covenants currently allow for only a single association. As Petitioners concede, creating two new associations requires amending the Covenants consonant with the creation of two new associations:

The Structure is a recipe for deadlock.  
**The GLA Covenants call for 12 directors, 6 representing North and 6 representing South. \* \* \***  
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.

\* \* \*

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.

*Status Report*, Ex. A, "Why Glastonbury Should Separate into North and South" (emphasis added). Therefore, passing the resolution to split the GLA requires amending the Covenants, in addition to following the statutes for dissolution.

Specific items in the Covenants that would require amendment are as follows. First, numerous definitions in the Covenants would have to be amended. "Association" would have to be redefined from "Glastonbury Landowners Association,

Inc.” to reference the new North and South Glastonbury associations. Covenants, 3.01. “Member of the Association,” defined as, “A person, firm or corporation that is a Landowner and has become registered with the Association” would also have to be redefined to reflect membership in the two new associations. Covenants, 3.18. “Member of the Association in Good Standing” and “Membership Interest” must also be redefined to reflect the two new associations. Covenants, 3.19, 3.20.

Second, the community administration structure set forth in the Covenants requires amendment to enact the resolution to split. The “Association’s Authority” must be amended to reference the new associations of Glastonbury North and Glastonbury South. Covenants, 10.01. The “Enforcement of Covenants” must also be amended to allow the two new associations to enforce the Covenants. Covenants, 10.02. Last, “Association Membership” must be amended to place a landowner in either the Glastonbury North or Glastonbury South association. Covenants, 10.04.

Third, the community assessment structure must be amended if the GLA is split. “Assessments” must be modified so that payments are made to one of the two new associations. Covenants, 11.01. “Annual Community Assessment” and “Special Assessments” must also be modified to reference the two new associations. Covenants, 11.03, 11.04. “Accounting, Allocation and Use of Funds” must be modified as well to allow for the funding of two associations. Covenants, 11.05. Finally, “Effect of Nonpayment of Assessment” must be modified to reflect delinquency in one of the two new associations. Covenants, 11.06.

Fourth, as the Court noted, all the recreation and common land easements in Section seven (7) of the Covenants would have to be amended. Likewise, the easements and road agreements in Section eight (8) of the Covenants would have to be amended. Further, the Certificates of Survey with platted road easements would also have to be amended. The foregoing is necessary to preserve the property rights of GLA’s residents.



#### IV. CONCLUSION

For the above reasons, the Glastonbury Concerned Landowners Committee respectfully requests that the Court declare that the resolution to split the GLA failed to pass.

DATED this 9<sup>th</sup> day of January, 2023.

Lund Law, PLLC

  
Hertha L. Lund

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of January, 2023, a true and correct copy of the foregoing document was served upon the following individuals in the manner set forth below:

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Board of Directors of GLA GLA Members in Good Standing via Board of Directors	<input type="checkbox"/> First-class mail, postage prepaid <input type="checkbox"/> FedEx <input type="checkbox"/> Hand delivery <input type="checkbox"/> Via fax: X     Via email: <a href="mailto:info@glamontana.org">info@glamontana.org</a>
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## CERTIFICATE OF SERVICE

I, Hertha Louise Lund, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response First Appearance to the following on 01-09-2023:

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Dated: 01-09-2023