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Attorneys for Petitioners

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

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

**INTRODUCTION**

COMES NOW, the named Petitioners in the above captioned matter, by and  
through counsel, and file this Brief in Support of their Motion to Strike Glastonbury

Concerned Landowners Committee’s Response to Status Report (filed on or about January 11, 2023).

## **I. LEGAL AUTHORITY & ARGUMENT**

### **A. The Anonymous “Stranger” Filing of the Objectionable Brief is Prohibited by This Court’s Order and Montana Rule of Civil Procedure 17.**

On October 18, 2022, this Court entered an order allowing further filings, as follows: “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. 19, 2022.

Montana Civil Rule of Procedure 17 prohibits participation in a lawsuit by others than real parties in interest, as follows:

#### **Rule 17. Plaintiff and Defendant; Capacity; Public Officers.**

(a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

“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) (citing *McNeil Constr. Co. v. Livingston State Bank*, 300 F.2d 88, 90 n.5 (9th Cir. 1962)). “The effect of the first sentence of Rule 17(a) is that the action must be brought by the person who is entitled to enforce the right according to the governing substantive law and will not necessarily be brought in the name of the person who ultimately will benefit from the recovery.” *Kondelik v. First Fid. Bank*, 259 Mont. 446, 457, 857 P.2d 687, 694 (1993) (overruled on other grounds) (citing 6A Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d § 1543 (1990)).

The objectionable brief here was allegedly filed on behalf of “Glastonbury Concerned Landowners Committee, a Committee representing more than eighty (80) landowners.” *See* Resp. Status Report at 1, Jan. 9, 2023. The objectionable brief provides no other identification or description of the “Committee”, including identity or standing of its members. For as much as disclosed, the members could be entirely absentee or have no legal interest in the lands or subject of this lawsuit. The real parties in interest have not ratified, joined, or been substituted into this action pursuant to Montana Civil Rule of Procedure 17(a)(3).

The “Committee” is not a recognized committee by the Glastonbury Landowners Association, Inc. (“GLA”) or authorized by its Covenants, Bylaws, or governing

documents.<sup>1</sup> The “Committee” is not registered with the Montana Secretary of State.<sup>2</sup> The “Committee” has no legal recognition, and as such, cannot appear in the Courts of this State, nor participate in these proceedings. The “Committee” is not a real party in interest pursuant to Montana Rule of Civil Procedure 17, nor does it constitute any of the exceptions listed in Civil Rule 17(a)(1)(A-G). That the filing was made by an attorney does not cure the fatal defect that only real parties in interest can participate in Montana judicial proceedings.

There exists no showing that the “Committee” represents (1) landowners of lands in the GLA, (2) that those landowners are in good standing, or (3) that such persons would be entitled to vote in these elections or participate in this lawsuit. It should be stricken.

## II. CONCLUSION

This Court’s order precludes such “stranger” and “anonymous” filings. The Civil Rules and caselaw prohibit such filings. Petitioners request this Court strike the improper filing from the record and disregard its contents.

DATED this 13th day of January, 2023.

/s/ Nicholas J. Lofing  
Attorneys for Petitioners

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<sup>1</sup> The GLA’s governing documents have previously been provided to and relied upon by the Court.

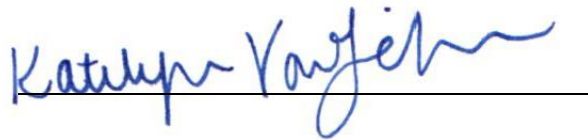
<sup>2</sup> <https://biz.sosmt.gov/search/business>

## CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2023, a copy of the foregoing document was served on the following persons by the following means:

\_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ Mail  
\_\_\_\_\_ Overnight Delivery Service  
\_\_\_\_\_ Fax (include fax number in address)  
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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 - Brief In Support of Motion to the following on 01-13-2023:

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Electronically signed by Katelyn Van Gilder on behalf of Nicholas J. Lofing

Dated: 01-13-2023