



November 13, 2016

To the Glastonbury Landowners Board of Directors

Sent via email

Dear Board:

You have asked me for a formal opinion letter regarding how to do a recount, recounting the votes of a recent election. According to the information given to me, you recently implemented a new way of counting votes so that the votes were anonymous, yet were still verified as coming from members in good standing. One of your owners is allowed to vote for her five lots. It is my understanding that due to a "glitch" only 2 of her 5 votes were counted. The reason you have asked for a legal opinion is that there was a very tight race in South Glastonbury that could be affected by the recount.

According to your bylaws, the Secretary is the drafter of minutes, issues notices of meetings, keeps the minutes and has other duties "as are incident to his office or are properly required of him by the Board or President." Bylaws, Article VII, Section G. According to the Montana Non-Profit Act, the act typically refers to the Secretary with regards to most of the procedure leading up to and counting the voting. It is the secretary that sends notice of the meeting, it is the secretary that oversees the member list, and it is the secretary that reviews the vote and determines that the count was correct. M.C.A. 35-2-542. If the secretary finds an issue with the vote, then the "Corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate the votes" finds an issue with the vote. M.C.A. 35-2-542(3).

It is my understanding (and I may be incorrect) that the Board had meet and reviewed this issue. It is my understanding that the Board has agreed that the two votes were not counted, but were cast by a member in good standing. Thus, they should be counted. If you have not had this meeting, you should do so and make a determination regarding the votes. If you have this meeting, then you invoke the immunity clause in M.C.A. 35-2-542(4), which states that as long as you are acting in good faith, then you will be immune.

Once you have made the decision to count or not count the votes, then you should meet with all of the parties involved (if they were not at the meeting) to discuss what you are going to do, why you came up with that result, and how it will affect them. If the Secretary feels for any