

1 Brenda R. Gilbert
2 District Court Judge
3 Sixth Judicial District Court
4 414 East Callender
5 Livingston, MT 59047
6 (406) 222-4130

PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

JUN 21 2018

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FILED
BY *Molly Brallier*
DEPUTY

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

8 KATHLEEN RAKELA and other members of
9 the Glastonbury Landowners Association,

Cause No. DV 17-150

10 Plaintiffs,

11 vs.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

12 GLASTONBURY LANDOWNERS
13 ASSOCIATION, INC. (GLA), DENNIS RILEY,
14 DANIEL KEHOE, MARK SEAVER,
15 RICHARD JOHNSON, CHARLENE MURPHY,
16 KEVIN NEWBY, LEO KEELER and Other
Does,

17 Defendants,

18 This case came before the Court on March 23, 2018, for a hearing regarding Plaintiff's Motion for
19 an Order to Show Cause why a Preliminary Injunction should not be issued. The Plaintiff, Kathleen
20 Rakela, was personally present with her counsel, Jami Rebsom. Some of the individual Defendants were
21 present together with Defendants' counsel, Seth M. Cunningham. The Court heard testimony and
22 evidence relative to the request for preliminary injunctive relief. Based upon the testimony and evidence
23 presented, the records and files herein, and applicable legal authority, good cause exists for entry of the
24 Findings of Fact and Conclusions of Law that follow:
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26 **FINDINGS OF FACT**

- 27 1. A true and correct copy of the Bylaws of Glastonbury Landowners Association, Inc. (Bylaws)
28 was admitted as an Exhibit.

- 1 2. A true and correct copy of the Restated Declaration of Covenants for the Community of
2 Glastonbury (Covenants) was admitted as an Exhibit.
- 3 3. Article XII, Paragraph A of the Bylaws states "The Board shall have the power to interpret all
4 the provisions of these Bylaws and such interpretation shall be binding on all persons."
- 5 4. Section 2.02 of the Covenants state they are to "be interpreted in the light of its express
6 language, context and intent...."
- 7 5. Article VI, Paragraph B.10 of the Bylaws gives the GLA Board of Directors the power to
8 "Adopt Rules and Regulations from time to time for the conduct of the affairs of the
9 Association and the enjoyment of the Members, provided that no Rule or Regulation so
10 adopted shall be in conflict with Montana law, the Covenants, the Articles of Incorporation or
11 these Bylaws, and provided further that no Rule or Regulation shall be so construed so as to
12 impair in any manner the lien of any mortgage or deed of trust with respect to any of the
13 property if such Rule or Regulation is promulgated after the recordation of said mortgage or
14 deed of trust."
15 6. Article VI, Paragraph B.16 of the Bylaws gives the GLA Board of Directors the power to
16 "Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner
17 that is not inconsistent with any provision of the Covenants, Articles of Incorporation or these
18 Bylaws."
19 7. Section 2.07 of the Covenants state: "The Association shall have the authority to adopt
20 reasonable rules and regulations which are consistent with the intent and enabling provisions
21 of these covenants or the Master Plan."
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- 1 8. Section 12.01 of the Covenants states: "The Association reserves the right to waive or grant
2 variances to any of the provisions of this Declaration, where, in its discretion, it believes the
3 same to be necessary and where the same will not be injurious to the rest of the Community."
- 4 9. Article V, Paragraph F of the Bylaws states: "Each Member in good standing as defined in the
5 Covenants, or any person designated by them to act as proxy on their behalf (who need not be
6 a Member), shall be entitled to cast the vote(s) appurtenant to the Member's Membership
7 Interest(s) at all meetings of the Members."
- 8 10. Section 3.19 of the Covenants defines a Member of the Association in Good Standing as "A
9 member of the Association that is current in the payment of all assessments to the Association
10 and is not in violation of these covenants. A member in good standing is qualified to vote as
11 provided herein and in the bylaws and rules of the Association."
- 12 11. The GLA Board of Directors has interpreted the above definition to mean that, to vote, a
13 member must be current on all assessments, regardless of the number of Lots the member
14 owns and corresponding membership interests the member may vote if in good standing. The
15 GLA Board of Directors has also interpreted the above definition to mean a member may not
16 be in violation of any Covenants, regardless of the location or circumstances of the violation.
17
- 18 12. Section 11.03 of the Covenants states: "The annual assessment shall be payable either annually
19 on or before January 31 or quarterly in four equal increments on or before January 31, April
20 30, July 31 and October 31 of each year."
- 21 13. Section 11.06 of the Covenants dictates that penalties and interest begin to accrue on unpaid
22 assessments 30 days after the due date.
- 23 14. Article VI, Paragraph C of the Bylaws states: "Prior to each Annual Meeting, the Board shall
24 prescribe the opening date and the closing date of a reasonable filing period in which every
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1 Member in good standing who has a bona fide interest in serving as a Director may file as a
2 candidate for any position to be filled by votes of the Membership Interests. The closing date
3 shall allow time for the ballots to be mailed with the notice of the Annual Meeting to the
4 Members. The Board shall also establish such other Rules as it deems appropriate to conduct
5 the nomination of Directors in a fair, efficient and cost-effective manner.”
6

7 15. Covenant 3.20 provides that, “[E]ach parcel is a separate membership interest, with separate
8 rights, privileges, duties and responsibilities. Each parcel is entitled to a separate vote.”

9 16. On April 10, 2017, the GLA Board voted to adopt some changes to election procedures which
10 had been discussed at length prior to this meeting in election committee meetings open to all
11 Members. The changes enumerated that full payment of assessments was required by October
12 31, 2017 to be eligible to vote as a member in good standing at the annual election meeting in
13 November.
14

15 17. In the past, payments had been allowed the day of the meeting to make someone eligible to
16 vote at that time. This practice was allowed since the 1990’s as a variance. This practice was
17 only possible because no finance charges were levied on October 31, contrary to the
18 Covenants. Allowing payment up to and on election days complicated the process of
19 determining eligibility on election days.
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21 18. The GLA’s accounting procedures made the practice of allowing payment on election day
22 more difficult. Additionally, only members who attend the meeting in person have the
23 opportunity to pay on election day causing disparity of treatment. The new procedures solve
24 these issues.
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26 19. In particular, if a member arrives at the annual meeting ready to pay past assessments, the
27 latest statement for October 31 would not reflect the correct amount because interest and/or
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1 penalties, if applicable, for the time between October 31 and the date of the annual meeting
2 would not have been assessed. Even if the member paid the balance on the October 31
3 statement, the member would still not be current on assessments.

4 20. Notice of the October 31 deadline for payment of assessments was sent in the Spring
5 newsletter, in the assessment statements for July and October of 2017, in the nomination
6 packets on August 1, 2017 and in the voting packets on September 25, 2017.

7
8 21. Nominations for the GLA Board for the November 2017 annual election were open from
9 August 1, 2017 to September 13, 2017.

10 22. Plaintiff Kathleen Rakela testified that she decided to run for the Board of the GLA in August
11 of 2017. She nominated herself and checked the box on the form indicating she was a member
12 in good standing. Ms. Rakela has owned property in GLA since 1999. She owns four parcels
13 in Glastonbury North and four parcels in Glastonbury South.

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15 23. On or about September 25, 2017, the GLA's administrative assistant made the Board aware
16 that Plaintiff had subdivided Lot 53 in North Glastonbury in the fall of 2016 into Lots 53B and
17 53C. Plaintiff did not inform the GLA of this change. No assessments had been paid on the
18 newly created Lot.

19
20 24. The GLA contacted Plaintiff about the subdivision. Her response was that she had a court
21 ordered subdivision in 2016 and conveyed the Lot to her son. She asked that all past due
22 assessments be sent to her son.

23
24 25. Plaintiff had submitted a preliminary review of the proposed subdivision to the GLA Board in
25 2008, but it took her eight years to complete the subdivision process. She never notified the
26 GLA of the final subdivision in 2016. No assessments were paid on the new Lot.

1 26. Plaintiff maintains she transferred the newly created Lot to her son. MT Cadastral and
2 Montana property records still show both Lots 53B and 53C with Plaintiff listed as the primary
3 owner. No deed showing the Lot was transferred has been produced. COS 2546CO states
4 "Tract 53C is to be transferred to my son, Parsifal Pittendorfer." It does not actually transfer
5 the tract.

6
7 27. Section 10.04 of the Covenants states: "Each Landowner agrees to notify the Association in
8 the event of sale or transfer of any of the Landowner's property in the Community qualifying
9 as a Membership Interest."

10 28. If the GLA does not know of transfers, it is deprived of assessments, and it cannot send ballots
11 and other notices to the new landowner.

12
13 29. After inquiries with Plaintiff, the Board discussed the situation at its regularly scheduled
14 meeting on October 9, 2017. The Board found Plaintiff in violation of Section 10.04 of the
15 Covenants. Her violation was during the nomination period for the upcoming election calling
16 into question whether or not she was in good standing during the nomination period. There
17 were two votes. The first vote was to accept Plaintiff as a candidate, and it failed with 1 in
18 favor, 9 opposed, 1 recusal and 1 abstention. The second was to disqualify Plaintiff as a
19 candidate, and it passed with 8 in favor, 1 opposed, 1 recusal and 2 abstentions. Plaintiff was
20 disqualified because she was in violation of the Covenants during the nomination period.
21 Plaintiff asserts three Board members should not have voted due to a conflict of interest, but
22 even if they had recused themselves, the results would have been the same.

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25 30. At this point, absentee ballots had been mailed and 20 ballots had already been returned. So
26 the Board voted to postpone the annual meeting to December 2, 2017 to give time to notify
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landowners that Plaintiff was no longer a valid candidate to be named on the ballot and send new absentee ballots. The election was halted by Order of the Court on November 29, 2017.

31. Charlene Murphy testified that at this point, the GLA wishes to hold a new election with new nominees rather than try to use the previous fall's nominees.

32. Plaintiff testified that Board members charged with enforcing the Covenants and collecting assessments should comply with the Covenants and be current on their assessments.

33. Plaintiff agreed that she wanted an election to go forward with new nominations.

34. Plaintiff testified that she had no reason to believe she would not be in good standing.

35. Plaintiff did not claim that she needed to pay her assessments at the door on election day.

36. Charlene Murphy testified there was no plan or suggestion to destroy ballots already cast for Plaintiff or Marshall Haley. She also testified there was no plan to destroy any board meeting recordings. She testified that the Defendants would like a new election with new nominations as well.

37. The Court admitted Defendants' proposed election timeline and procedures as Court's Exhibit 1. Plaintiff agreed to the proposal.

38. Clare Parker, who submitted a petition to the board and filed it with Plaintiff's suit asking for a new election, testified on behalf of Plaintiff. She agreed that the proposed election would eliminate the need for her petition.

39. The Court issued an Order on March 26, 2018 regarding the make-up election. The Order dictated the make-up election procedures and timeline based upon the agreed upon procedures and timeline in Court's Exhibit 1.

CONCLUSIONS OF LAW

- 1 A. Covenants are construed under ordinary principles of contract law. When interpreting a contract,
2 "the words of a contract are to be understood in their ordinary and popular sense." Mont. Code
3 Ann. § 28-3-501.
- 4 B. The Bylaws give the GLA Board of Directors discretionary power to interpret the Bylaws and
5 such interpretations, if reasonable, are binding on the members.
- 6
7 C. The plain language of Section 3.19 of the Covenants defines a member in good standing as a
8 person who is current on *all* assessments and not in violation of the Covenants. The word "all,"
9 understood in its ordinary and popular sense includes every assessment a member may owe
10 whether on one or multiple Lots. There is no exception for multiple Lots.
- 11
12 D. The Board interprets Covenant Section 3.19 to mean that a member must be current on all
13 assessments for every Lot owner in order to be eligible to vote. This interpretation is reasonable
14 and correct.
- 15
16 E. Plaintiff's contention that Section 3.20 of the Covenants somehow grants an exception to owners
17 of multiple Lots is unreasonable. That Section simply defines membership interests and grants one
18 membership interest per Lot owned. It does not change the requirement that a member in good
19 standing must be current on all assessments.
- 20
21 F. The GLA Board of Directors has broad discretionary rule-making authority under its Covenants
22 and Bylaws for the general affairs of the GLA and the conduct of elections.
- 23
24 G. The GLA Board of Directors also has the power to grant variances or waivers to the Covenants if
25 necessary and not injurious to the community. It stands to reason the Board has the power to deny
26 a variance or waiver under the same conditions.
- 27
28 H. The plain language of the Covenants requires assessments to be paid by certain deadlines with
October 31 being the due date for fourth quarter payments.

- 1 I. The Board's decision to require members to be up to date on all assessments by the October 31
2 deadline prior to the annual meeting in order to be eligible to vote is a reasonable interpretation
3 and application of the Covenant assessment due dates and within its rule-making authority.
- 4 J. This rule does not unduly burden members as the annual meetings are typically held the second
5 Saturday of each November. Thus, any member who wants to pay assessments on election day is
6 simply required to pay a few days sooner.
- 7 K. The justification for this rule is reasonable as it alleviated problems with accounting and applies
8 the Covenants fairly to all members.
- 9 L. Notice of these election rules was sent five times to members and constitutes adequate notice of
10 the procedures.
- 11 M. Plaintiff maintains she transferred the Lot created in 2016 to her son, but property records still
12 show the Lot is in her name and no Deed or Realty Transfer Certificate evidencing the transfer
13 has been produced.
- 14 N. Plaintiff represented to the GLA Board of Directors in October of 2017 that the Lot had been
15 conveyed to her son. Based on this information, the Board found that she had violated Section
16 10.04 of the Covenants for failing to notify the GLA of the transfer. Her violation was during the
17 nomination period which made her not in good standing and disqualified her as a nominee.
- 18 O. Either Plaintiff was in violation of Section 10.04 of the Covenants because she failed to notify the
19 GLA of the transfer and/or she was not current on her assessments for the new Lot. Either way,
20 she was not in good standing during the nomination period although the Board made its
21 determination solely based on Plaintiff's representation that she had transferred the Lot to her son.
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1 P. The Board's conclusion that Plaintiff was not in good standing during the nomination period was
2 correct. The Board was entitled to rely on Plaintiff's representations that she had transferred the
3 Lot to her son, and she did not notify the GLA of the transfer.

4 Q. The fact that Board Members Plaintiff was running against voted to disqualify her does not change
5 the fact that she was not in good standing. Further, if those Members had recused themselves, the
6 outcome of the vote would not have changed, making it harmless error at worst.
7

8 R. Plaintiff has cured the assessments due on the new Lot. However, the Court is not satisfied Plaintiff
9 has provided adequate proof of the transfer of ownership by her son. While Plaintiff maintains she
10 transferred the Lot to her son, no records evidence that. The GLA is put into a difficult position as
11 to whom to bill for assessments and who is entitled to vote the Lot's membership interest. Until
12 some evidence of the transfer is produced by Plaintiff, the GLA is entitled to rely on the existing
13 records within MT Cadastral to determine ownership, assessments, voting and whether or not
14 Plaintiff is in good standing.
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16 S. All parties have agreed to hold a make-up election under the terms of what was marked Court's
17 Exhibit 1. This includes a new nomination period for new nominees. Given this agreement, the
18 issue of whether Plaintiff was in good standing during the August 1, 2017 to September 13, 2017
19 nomination is moot. Additionally, because new ballots will be issued and cast, the ballots already
20 cast for Plaintiff or Marshall Haley are moot insofar as they will not be counted in the make-up
21 election.
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23 T. There is no immediate or irreparable injury to Plaintiff, and the TRO dated November 29, 2017 is
24 hereby vacated. The existing Directors' terms shall be extended only to the next Director's
25 meeting after the June 16, 2018 make-up election. The ballots previously cast and recordings of
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1 board meetings should be preserved pursuant to the normal rules of discovery. There is no reason
2 to believe those items will be destroyed.

3 U. The Court's Order dated March 26, 2018 cures the alleged injury in Plaintiff's Petition for a TRO.
4 The Petition for a TRO should be denied. The Court's Order of March 26, 2018 also supersedes
5 the Petition filed with Plaintiff's Complaint seeking a new election as well.

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7 Based upon the foregoing Findings of Fact and Conclusions of Law, the Court now enters the
8 following Order:

9 **ORDER**

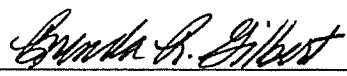
10 **I.**

11 The Temporary Restraining Order entered by the Court on November 29, 2017 is VACATED.
12 Plaintiff's request for a Temporary Restraining Order and Preliminary Injunctive relief is DENIED.
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14 **II.**

15 The Order of March 26, 2018, granting a new election supersedes that Petition filed with
16 Plaintiff's Complaint seeking a new election such that said relief sought by Clare Parker's Petition is
17 DENIED.

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19 DATED this 19th day of June, 2018.

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21 
22 Hon. Brenda R. Gilbert, District Court Judge

23
24 c: Jami Rebsom p.p.
Seth Cunningham

