

SEP 27 2018

Val and Daniel O'Connell, other GLA members

PO Box 77
Emigrant, MT 59027

PARK COUNTY CLERK
OF DISTRICT COURT
JULIA LITTLE

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

FILED
MOLLY BRADSHAW

Val & Daniel O'Connell, other GLA member(s)

THIRD PARTY Plaintiffs,

&

Kathleen Rakela and other members of the
Glastonbury Landowners Association;

Petitioner(s),

v.

Board of Directors for Glastonbury
Landowners Association, Inc. (GLA), including
Dennis Riley, Daniel Kehoe, Mark Seaver,
Richard Johnson, Charlene Murphy,
Kevin Newby, Leo Keeler, and other Does;

Respondent(s).

Cause No. DV-17-150
Judge Brenda Gilbert

**O'CONNELLS' RULE 60 & COUNTERCLAIM MOTIONS AGAINST ORDERS (DATED
JUNE 19, 2018); & FOR A JURY TRIAL TO ADJUDICATE COUNTERCLAIMS**

COMES NOW THIRD PARTY Plaintiffs-Val and Daniel O'Connell, hereby file this
"O'CONNELLS' RULE 60 & COUNTERCLAIM MOTIONS AGAINST ORDERS DATED
JUNE 19, 2018; & FOR A JURY TRIAL TO ADJUDICATE COUNTERCLAIMS." These
motions are filed pursuant to M.R.Civ.P. Rule 60 and Rule 13. The counterclaim motion (per rule
13) seeks a jury trial and Declaratory Judgement Relief (on matters of law) on counterclaims

herein arising out of June 19th Order findings and conclusions of law; and this rule 60 motion and counterclaims request relief to alter, amend, and rescind Orders dated June 19, 2018; and "any other reason that justifies relief."

VENUE & JURISDICTION

1. Venue to bring these motions in this case opposing June 19, 2018 Orders are properly filed (14 weeks after this Order) in this court in Park County, Montana. Glastonbury Landowners Association Board, as defendant(s) against these motions, is hereafter called the "GLA."

Permissive joinder of Third Parties is allowed under, per M.T.R.Civ.P. rule 20 (1) Plaintiffs. Persons may join in one action as plaintiffs if: (A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all plaintiffs will arise in the action.

O'Connells hereby contend that they are asserting the right to relief in the alternative with respect to or arising out of the same transaction as the June 2018 Orders; which motions cite questions of law or fact common to all plaintiffs that has arisen from this Order, as cited below. O'Connells as current GLA members and Third Party Plaintiffs, thus have proper venue and jurisdiction to bring these motions (rule 13 & 60) pursuant to rule 20(1) above, because they arise directly out of the June 19, 2018 Court Orders which infringes on GLA members' Constitutional due process rights, and rights guaranteed under GLA Covenant/Bylaw contracts; also harming rights of all GLA members. Thus any and all GLA members can be parties¹ regarding this June 2018 Order. Furthermore, since Rakela has failed to appeal this order, it makes it imperative to file these third party motions against that Order.

¹ The attached March 22, 2018 Order denied O'Connells motion to be a party to this case.

INTRODUCTION

2. O'Connells, as current members of the GLA, have jurisdiction and venue to file these rule 13 & rule 60 motions and counterclaims pursuant to rule 20(1) above. The rule 60 motion and counterclaim motion claims arose directly out of June 19, 2018 Order that O'Connells' contend do harm their rights and all other GLA members. These motions demand the right to process, review, and adjudicate the June 2018 Order that took away members rights, not just from Rakela. In fact, June 19th Orders (DV-17-150 attached) made "findings of facts" and "conclusions of law" against O'Connells and against all other GLA members as shown below, without their knowledge and consent. Therefore these motions are necessary and justice so requires motion relief to alter, amend, and rescind Orders dated June 19, 2018; and "any other reason that justifies relief" for reasons cited below.

BACKGROUND

3. On Nov. 29, 2017, this court granted a temporary restraining order filed by Petitioner-Kathleen Rakela against the GLA Defendants. That Nov. 2017 Order (pp. one) said Rakela alleged GLA Defendants' "violations of the [GLA] Association's rule making requirements that would directly impact her rights" regarding GLA elections. However since GLA members share the same rights regarding GLA elections, GLA members now contend that the June 2018 Orders also denied all GLA members these same rights (under GLA governing documents). So without these motions, it would deny members due process process rights to process, review, and adjudicate members rights that were violated in that June 2018 Order.

ARGUMENT

4. For instance, June 2018 Orders ruled against Rakela's "Amended Complaint" filed April 23, 2018, that said (pp. 6), "GLA's new policy/rule also appears to be in conflict with the voting rights guaranteed to landowners in the Covenant, [such as] "Section 3.19" describing who is a GLA member "in good standing" as "current in the payment of all assessments to the Association..." The June 2018 Order page 3 (¶ 10-11) reiterated this Covenant as the basis for denying Rakela's claims. However this Order does not deny that such finding certainly impacts all members rights, in that this order "Finding of Fact" lumps all member assessments dues together under Covenants 3.19, even multiple assessments for multiple properties. This Order incorrectly cited Covenant 3.20 once on (pp.4¶ 15). Then June 2018 Order, in error, fails for ever consider that GLA Covenant 3.20 that directly contradicts language in Covenant 3.19 used to deny members rights. Covenant 3.20 says;

Covenant 3.20: "...Each of the following separate units of property, whether held by one or more than one Landowner, shall constitute a separate and distinct Membership Interest that is entitled to one (1) vote and with such voting and other rights and privileges and with such duties and responsibilities as are set forth herein and in the bylaws and rules of the Association: a. A parcel; ..."

5. GLA Members hereby state **counterclaim #1**: For June 2018 Orders are in error that failed to consider Covenant 3.20 that contradicts Covenant 3.19; which Order thus harmed and denied due process to all GLA members' rights under these Covenants for being in conflict with each other. This conflict is evident in June 2018 Orders (at ¶ 10-11 pp. 3) citing Covenant 3.19 language that implies (but does not state) payment of "all assessments" to mean multiple parcel assessments NOT be treated as separate rights, duties, and responsibilities. The Court Order (at ¶

10-11 pp. 3) in error agreed with this one Covenant without considering the Covenants taken together or without considering other Covenants that directly contradict or modify it; including Covenant 3.20 that explicitly states the opposite. Covenant 3.20 said landowners have “a separate and distinct Membership Interest...rights...duties and responsibilities” for each “separate units of property.” Notice this covenant does not lump all properties together, but demands they be treated separately with separate rights, duties, and responsibilities (granted in Covenant 3.20) for each parcel, separated also by local in North or South Glastonbury. Thus Covenant 3.20 directly conflicts with this Order finding for Covenant 3.19 or at least modifies it. Language in 3.19 merely implies multiple property assessments be treated as one assessment. But Covenant 3.20 implicitly states and requires each property be treated separately, having separate rights, duties, and responsibilities. Thus Covenant 3.20 is the stronger language, but the June 2018 Order, in error, never addressed nor resolved, nor considered these conflicting covenant meanings. Thereby the June 2018 Order, in error, did harm or deny due process Covenant rights to all GLA members pertaining to this Covenant 3.20. For this rule 60 motion claim and counterclaim #1, GLA members now have the right to process, review, and adjudicate this claim and other claims against this Order.

6. For counterclaim #2: the June 2018 Order, in error, harmed or denied all GLA members' their due process rights and other rights, by failing to consider conflicting language also between GLA Bylaw VI.A & D and Covenant 3.19. The Rakela petition (pp. 9) explains GLA Bylaw VI.A. applies to GLA Board candidates for North and South Glastonbury that should be “qualified separately” according to GLA Bylaw VI.A. & D. The problem again is that the June 2018 Order ignored this Bylaw and never considered it in its findings. So the Court, in error,

failed to consider that this GLA Bylaw VI.A. & D comports with and wholly supports Covenant 3.20 giving separate rights, duties, and responsibilities (such as separate property assessment does to qualify candidates separately for North or South). This Bylaw VI.A & D is also in conflict with Covenant 3.19; which Order, is thus in error to solely rely upon this Covenant 3.19 and failing to consider this Bylaw and other covenants that conflict with it.

Also June 2018 Order, in error, failed to ever mention this bylaw in direct conflict with Covenant 3.19 that was used to deny members covenant rights without their knowledge and consent. Court Order also failed to put Covenant 3.19 in context with Bylaw VI. A& D and Covenant 3.20 that contradict or modify it. Therefore, by failing to consider Bylaw VI.A & D (not just Covenant 3.20), June 2018 Order, in error, directly harms and denies GLA members' due process rights under Bylaw VI. A & D. (& Covenant 3.20). This counterclaim #2 is therefore necessary to allow GLA members to fairly adjudicate, process, review, and rescind the June 2018 Order against members' rights within this Bylaw VI. A & D.

7. For this Counterclaim #3: the June 2018 Orders, in error, did again directly harm and deny GLA members' due process and rights, by failing to allow equitable doctrines of estoppel, laches, and waiver of the new GLA 2016 rule. To explain this counterclaim #3 for estoppel, laches, and waiver: the Rakela pleadings and Wallace (hearing) testimony stated that GLA failed to ever require them, as GLA Board candidates, to be current on all their multiple GLA properties, until 19 years later in 2016, by the new GLA rule.

This 2016 rule certainly put a limit on candidates qualifications to run for the GLA Board. GLA's conduct before this 2016 rule, and GLA's unreasonable delay in asserting this

2016 GLA rule or privilege after 19 years of not asserting it, is the basis for this counterclaim #3 claiming GLA members' rights to estoppel and laches and waiver. GLA waived this rule and privilege for 19 years of non-enforcement of this rule or privilege. June 2018 Order in error failed to consider the historical record: no GLA Board candidate owning multiple properties, has ever before been disqualified through just one of their properties delinquent in assessments; but which 2016 GLA rule now requires qualification to the GLA Board be limited to only those candidates who paid all assessment in full for every member property they own. From 1997 through 2015, GLA Board waived their right, and failed to exercise their 2016 rule under Covenant 3.19. Thus GLA's previous conduct before 2016; and GLA's unreasonable delay in asserting this new GLA 2016 rule (per Covenant 3.19) after 19 years of not claiming it, therefore warrants counterclaim #3 relief under the legal doctrines of estoppel, and laches; or else under waiver (doctrine) for GLA waiving this right for the past 19 years.

Furthermore, this 2016 GLA rule (cited below) violates Covenant 2.07: Covenant 2.07 requires GLA 2016 rule and all rules be "reasonable rules and regulations which are consistent with the intent and enabling provisions of these covenants to the Master Plan."

This motion contends that Covenant 3.20 is an intent and enabling provision. This 2016 GLA rule also violates Covenant 2.07, because this 2016 rule is not reasonable nor consistent with Covenant 3.20 and Bylaw VI. A & D (as explained above). So Covenant 2.07 rights given to members was never considered in the June Order; which Order, in error, violated members due process under this covenant 2.07, and further supports granting this motion claim. This is since the 2016 rule was neither reasonable nor consistent with but conflicts with other covenants 3.20,

2.07, and Bylaw VI.A,C, & D. enabling provisions. Thus Counterclaim #3 relief is warranted for estoppel, laches, and waiver of GLA's 2016 rule (above) for GLA's admission of historical waiver of this 2016 rule (per Covenant 3.19) the past 19 years. Counterclaim #3 relief is therefore necessary to allow GLA members to fairly adjudicate, process, review, and rescind June 2018 Order in error to deny GLA members' rights of estoppel, laches, and waiver doctrines, and rights under Covenant 2.07 (not including rights denied under Covenants 3.20 and bylaws).

8. For counterclaim #4: this claim also arose out of the June 19, 2018 Order. The June 2018 Court Order allowed GLA Board to limit candidates qualifications to only those who paid assessments in full on all their properties. But the GLA created a new 2018 GLA rule arising out of this Order,; which 2018 rule now claims GLA can further limit candidates' "qualifications" to the GLA Board:

Attached "Exhibit A" (pp. 1-2) not only states all GLA Board candidates eligibility must be "paid in full on all assessments;" and GLA Board now for the first time limits GLA Board candidates "qualifications...and goals" in their candidate bios by forbidding "statements naming other persons or entities are not allowed and will not be distributed in the election mailing;" and forbidding candidates bios with "personal attacks will not be printed" or distributed in the election mailing.

Notice this new GLA 2018 rule, for the first time ever, allows GLA to limit or else toss out any or all GLA candidates "qualifications and goals" under this GLA 2018 rule (cited above from attached "Exhibit A" pp. 1-2). Since the June 2018 Court Order implies GLA can limit candidate qualifications, the GLA for the first time ever has gone further with its 2018 rule cited above to violate member rights under GLA Bylaw VI.C., as follows (in part):

GLA Bylaw VI. C. "Nomination of Directors. Prior to each Annual Meeting... The Board shall also establish such other Rules as it deems appropriate to conduct the nomination of Directors in

a fair, efficient and cost-effective manner... All [Board] candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes."

This new rule (Exhibit A) states the GLA will now limit (censor) or else "not distribute" candidates bios "qualifications and goals" which is a gross violation of member rights under Bylaw VI. C. (cited above). This Exhibit A rule, to censor and throw out any or all candidates' "qualifications and goals" obviously denies candidates (including Val O'Connell) their right to "a fair" and "reasonable opportunity to communicate their qualifications to the members and to solicit votes."

This rule is thus contrary to GLA Bylaw VI. C.: since it directly forbids GLA candidates the right to name names (such as for endorsement purposes); and directly prevents GLA candidates (Val O'Connell) the right (per Bylaw VI.C.) to a fair and "reasonable opportunity to communicate qualifications and soliciting votes" from members. For example, Board candidates can no longer name names of who endorses them; prevents candidates from soliciting votes by named endorsements; or votes from named supporters or their named opponents; or votes from named agents who oppose named opposition candidates; and even censors "personal attacks" against opposition candidates, to forbid criticizing opponents; which further prevent candidates from soliciting votes away from opponents and incumbent opponents. Even the 200 word limit (a small paragraph), is NOT by any stretch a fair or reasonable rule, since a small paragraph is not enough space to communicate qualifications and solicit votes. This rule in many ways is therefore contrary to Bylaw VI.C. as unfair and unreasonable rule for giving GLA Board incumbents an unfair advantage over all other candidates; and an unfair and unreasonable rule

based on past history; and directly denies candidates "a reasonable opportunity to communicate qualifications and soliciting votes" from members, in violation of Bylaw VI.C..

Plus under the doctrines of estoppel, laches, and waiver, GLA's 2018 rule (Exhibit A) greatly hinders candidates from soliciting votes away from rival incumbents; giving rival incumbent GLA Directors a huge unfair advantage over the rest of the candidates. Considering past elections since 1997 never did these things, nor discarded candidates bio "qualifications," this new 2018 rule violates GLA members' rights of estoppel, laches, and waiver doctrines, not just GLA Bylaw VI. C.. This counterclaim #4 is therefore necessary to fairly adjudicate, process, review, and rescind this rule a manifestation from June 2018 Orders that imply GLA has the power to limit candidates "qualifications" to solicit votes; in direct violation of explicit members rights within Bylaw VI.C. (cited above) and violates GLA members' rights of estoppel, laches, and waiver doctrines. For 21 years, the GLA has mailed all GLA Board candidates "qualifications and goals" to all GLA members, until now. Until now, GLA have never censored or thrown out candidates bios "qualifications." This historical record shows there is no fair and reasonable need to do so now, by this new rule. So members contend this motion is necessary arising out of the June 2018 Order that first allowed GLA to limit candidate qualifications as explained above.

CONCLUSION

Four counterclaims and rule 60 motion claims cited above show that June 2017 Orders did NOT apply the covenants or bylaws fairly to all GLA members. In fact, just the opposite happened. The June 2018 Orders negatively limit, harm, or else deny members rights of estoppel,

laches, and waiver doctrines; and limit or harm member rights under Covenant 3.20, Covenant 2.07, Bylaw VI. parts A, D, & C. Thereby rule 60 motion and rule 13 counterclaim motion are both necessary to fairly adjudicate, process, review, and rescind June 2018 Orders that negatively limit, harm, or mostly deny members rights cited above.

RELIEF

The counterclaim motion (per rule 13) seeks a jury trial and Declaratory Judgement Relief (on matters of law) on counterclaims herein arising out of June 19th Order findings and conclusions of law; and this rule 60 motion and counterclaims request relief to alter, amend, and rescind Orders dated June 19, 2018; and "any other reason that justifies relief."

DATED this 25th day of September, 2018.

BY


Valery O'Connell

BY


Daniel O'Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent this same day via first class mail to:

Defendants' Attorney-Brown Law Firm
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

Plaintiff(s) Attorney-Jamie Rebsom
411 W Park St
Livingston, MT. 59047

BY


Valery O'Connell

2018 ANNUAL MEETING and ELECTION for BOARD of DIRECTORS & OMBUDSMEN**General Instructions:**

- Please read the Nomination Letter & Candidate Guidelines before completing the forms below
- If you are nominating yourself: Please complete both the Nomination Form and the Nominee Information Forms A & B.
- If you are nominating someone else: Please - 1) Complete the Nomination Form with their information. 2) Ask your nominee(s) to complete the "Nominee Information Form – Sections A & B" and send it to us by e-mail, fax or mail.

Both forms must be received no later than close of business day 5:00 p.m. on September 28, 2018

E-MAIL: info@glamontana.org

FAX: (406) 451-0033 – Include a cover sheet with your name, phone number with area code, date, the total number of pages in your fax, and the name of the landowner you are nominating.

MAIL: GLA Board, Attention Elections, P.O. Box 312, Emigrant, MT 59027

NOMINATION FORM

NOMINATION FOR DIRECTOR			
Name of Nominee	Phone Number	Parcel #	North or South
1.			
2.			

Signature of person submitting nomination _____

Please print your name _____

NOMINATION FOR OMBUDSMAN			
Name of Nominee	Phone Number	Parcel #	North or South
1.			
2.			

Signature of person submitting nomination _____

Please print your name _____

NOMINEE INFORMATION FORM – SECTION A

NOTE: Nominees will only be considered when both the completed and signed Nomination Form and Nominee Information Form, Sections A & B are received by the GLA Board; the Board is not responsible for contacting nominees for missing information.

Your Name: _____ Parcel #: _____ North/South
Please print (Circle One)

I am a nominee for (circle one): Board of Directors or Ombudsman

Mailing Address: _____ Phone: (____) _____

- I am a member in good standing on the date of filing, when I signed and dated this nomination form
- I will be able to attend and present my background at the GLA Annual Election Meeting on November 10, 2018
- I will not be able to attend and present my background at the GLA Annual Election Meeting on November 10, 2018
- I have read the GLA Covenants, Bylaws, Master Plan, Standards, Conflict of Interest and Code of Conduct Policies

Exhibit A

**RESTATED DECLARATION OF COVENANTS
FOR THE
COMMUNITY OF GLASTONBURY**

THIS RESTATED DECLARATION OF COVENANTS FOR THE COMMUNITY OF GLASTONBURY is made effective as of the 26th day of September, 1997, as an amendment to the Declaration of Covenants for the Community of Glastonbury, in its entirety, with the written consent of CHURCH UNIVERSAL AND TRIUMPHANT, INC. (the predecessor "Grantor") and GLASTONBURY LANDOWNERS ASSOCIATION, INC. (the successor "Grantor") and the affirmative written vote and consent of the 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, with respect to the following facts and circumstances:

WHEREAS, the Declaration of Covenants for the Community of Glastonbury (hereinafter referred to as the "Declaration of Covenants") was originally recorded in the Office of the Park County Clerk and Recorder on December 16, 1982 in Roll 41 at Pages 1042-1078; and

WHEREAS, several amendments to the Declaration of Covenants (hereinafter collectively referred to as the "amendments") were duly made and respectively recorded in the Office of the Park County Clerk and Recorder in Roll 43 at Pages 616-618, Roll 45 at Pages 930-933, and Roll 90 at Pages 1208-1234; and

WHEREAS, several additions to the Declaration of Covenants (hereinafter collectively referred to as the "additions") were duly made and respectively recorded in the Office of the Park County Clerk and Recorder in Roll 45 at Pages 989-993, Roll 62 at Pages 620-624, Roll 66 at Pages 1117-1121, Roll 67 at Pages 27-33, Roll 71 at Pages 69-73, and Roll 71 at Pages 1171-1176; and

WHEREAS, an Assignment of Declaration of Covenants (hereinafter referred to as the "First Assignment") was executed by ROYAL TETON, LTD. and accepted by CHURCH UNIVERSAL AND TRIUMPHANT, INC. on December 30, 1986, which First Assignment assigned, transferred and conveyed all of the rights, interests, title, powers and responsibilities of ROYAL TETON, LTD. as the "Grantor" under the Declaration of Covenants, together with all amendments and additions thereto, to CHURCH UNIVERSAL AND TRIUMPHANT, INC., and was recorded in the Office of the Park County Clerk and Recorder on December 31, 1986 in Roll 59 at Pages 724-727; and

WHEREAS, a second Assignment of Declaration of Covenants (hereinafter referred to as the "Second Assignment") was executed by CHURCH UNIVERSAL AND TRIUMPHANT, INC. and accepted by GLASTONBURY LANDOWNERS ASSOCIATION,

2.06. Adoption of Land Use Master Plan. The Glastonbury Land Use Master Plan (hereinafter referred to as the "Master Plan") may be adopted, altered, amended or terminated 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 kept or filed of record for the purpose of adopting, altering, amending or terminating, or providing notice of the adoption, alteration, amendment or termination of, the Master Plan. When adopted, the Master Plan shall have the force and effect of the covenants in the regulation of land uses, development and growth in the Community, and shall be enforceable by the Association to the same extent as if set forth fully herein. Any portion of these covenants and any rule or regulation derived from these covenants may be incorporated into the Master Plan or may continue to exist independently of the Master Plan and shall be given full force and effect.

2.07. Rule Making. The Association shall have the authority to adopt reasonable rules and regulations which are consistent with the intent and enabling provisions of these covenants or the Master Plan. Said rules and regulations shall be enforceable by the Association to the same extent as if set forth fully herein. All existing rules and regulations adopted or amended prior to the effective date hereof in accordance with the original Declaration of Covenants, and all rulings or conditions of approval made pursuant thereto prior to the effective date hereof, shall continue to remain in full force and effect, to the extent not inconsistent with this Restated Declaration of Covenants, until repealed, superseded or amended by the Association. Any references in any such existing rules or regulations to predecessors-in-interest of the Association or to any officers, boards or committees of such predecessors shall be deemed to pertain to the Association or to officers, boards or committees of the Association, respectively.

2.08 Recordation. Any ownership, title, agreement, instrument or document specified or required in this Declaration of Covenants to be of record or to be recorded or filed of record shall be found of record or shall be recorded and/or filed of record in the Office of the Park County Clerk and Recorder, Livingston, Montana.

2.09 Effective Date. This Restated Declaration of Covenants shall become effective upon execution and recordation in the Office of the Park County Clerk and Recorder.

SECTION 3. DEFINITIONS AND SHORT NAME REFERRALS

As used in this Declaration, the following words, phrases and terms shall have the following definitions, meanings, synonyms and intent:

living area, bathroom and cooking facilities, designed for occupancy by a single family. The term includes a boarding house but not the individual living rooms within a boarding house that do not contain a bathroom and cooking facilities.

3.13. **Glastonbury.** The Community of Glastonbury.

3.14. **Glastonbury North.** Part of the Community of Glastonbury, being that property described on Exhibit "A" attached hereto, together with all additions thereto after the effective date hereof.

3.15. **Glastonbury South.** Part of the Community of Glastonbury, being that property described on Exhibit "B" attached hereto, together with all additions thereto after the effective date hereof.

3.16. **Landowner.** The record owner(s) of a parcel or condominium in the Community, including any purchaser(s) of record under a contract for deed or similar agreement. The term shall include the record owner(s) of a life estate or an estate for years for an original term of at least fifty-five (55) years in a parcel. Insofar as any ownership, voting or membership rights, privileges, duties and responsibilities provided for in this Declaration are concerned, the term shall not include the Association or the owner(s) of any unvested reversionary or remainder interest(s).

3.17. **Master Plan.** The Glastonbury Land Use Master Plan which is intended to direct the future growth and development of the Community, including all amendments thereto.

3.18. **Member of the Association.** A person, firm or corporation that is a Landowner and has become registered with the Association.

3.19. **Member of the Association in Good Standing.** A member of the Association that is current in the payment of all assessments to the Association and is not in violation of these covenants. A member in good standing is qualified to vote as provided herein and in the bylaws and rules of the Association.

3.20. **Membership Interest.** A Membership Interest consists of the rights, privileges, duties and responsibilities of membership in the Association and runs with title to the property in the Community owned by every Landowner. Each of the following separate units of property, whether held by one or more than one Landowner, shall constitute a separate and distinct Membership Interest that is entitled to one (1) vote and with such voting and other rights and privileges and with such duties and responsibilities as are set forth herein and in the bylaws and rules of the Association:

a. A parcel;

b. An undivided tenancy-in-common interest in a parcel existing as of the effective date hereof, whether owned individually or in joint tenancy; and

BYLAWS
OF
GLASTONBURY LANDOWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

A. Name. The name of the Corporation is GLASTONBURY LANDOWNERS ASSOCIATION, INC. (hereinafter referred to as the "Association").

B. Principal Office. The principal office of the Association in the State of Montana is located at 123 Arcturus Drive, Emigrant, Montana 59027 and the mailing address is Post Office Box 312, Emigrant, Montana 59027. The Association may have such other offices, within or without the State of Montana, as its Board of Directors may designate or as the Association's business may require.

C. Registered Office and Registered Agent. The address of the initial registered office and the name of the initial registered agent required by the laws of the State of Montana shall be as set forth in the Articles of Incorporation. The registered agent and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

OBJECTS

A. Landowners Association. These Bylaws are adopted in order to establish a landowners association (or community association) pursuant to the Declaration of Covenants for the Community of (Glastonbury, recorded in the Office of the Park County Clerk and Recorder on December 16, 1982 in Roll 41, pages 1042-1078, as Document No. 173158, together with all additions and amendments thereto (hereinafter referred to as the "Covenants"), and pursuant to the nonprofit corporation statutes of the State of Montana.

B. Purposes. The purposes of the corporation are as set forth in the Articles of Incorporation, and more specifically as follows:

To provide for the management, administration, maintenance, preservation and control of the parcels, roads and common properties within the real estate development commonly known as the "Community of Glastonbury" in Park County, Montana, including that property which is subject to and burdened by the Covenants (hereinafter referred to as the "Property"), and to promote the health, safety and welfare of the landowners and residents within the above-described Property.

ARTICLE VI

BOARD OF DIRECTORS

A. Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors. The Initial Directors shall be those Members of the Association appointed by the Incorporator identified in the Articles of Incorporation. Thereafter, the Board shall have an even number of positions available to be filled at election. Initially, this number shall be twelve (12). The actual number of Directors shall be those who have been nominated and elected to office from time to time as provided herein; however, the number of Directors shall not be reduced to fewer than four (4), nor increased to more than twelve (12). Of the twelve positions available on the Board of Directors, up to six positions shall be elected from Glastonbury North and up to six positions shall be elected from Glastonbury South, respectively, on separate ballots from among two separate groups of qualifying candidates.

B. General Powers and Duties. The business and affairs of the Association shall be managed by the Board of Directors. Such Directors shall in all cases act as a Board which shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts or things as are not by law or by the Covenants, Bylaws or Articles of Incorporation directed to be exercised and done by the Members. The Board shall be regularly convened and shall act by majority vote of those members present at a meeting, unless provided otherwise herein or in the Articles of Incorporation. Such powers and duties of the Board shall include, but not be limited to, the following:

1. Conduct, manage and control the affairs and business of the Association;

2. Make capital expenditures, enter into contracts and agreements, and provide the services and functions as are necessary to operate and maintain the Property and carry out the business of the Association, provided, however, that the following capital expenditures, contracts and agreements shall be approved by the Members as provided in Article V, paragraph F, of these Bylaws:

a. Individual contracts and agreements with a term in excess of five (5) years;

b. The sum of all capital expenditures in any given fiscal year totaling more than thirty percent (30%) of the Associations' average annual operating budget for the preceding three (3) years; and

c. Mortgaging, encumbering or otherwise disposing of any real property of the Association;

3. Fix, levy, collect and enforce the payment of common charges and assessments to Members required to carry out the duties and obligations of the Association, including, without limitation, the operation and maintenance of the community common property and roads;

4. Issue quarterly statements of account on the assessments and take necessary and appropriate action to collect assessments from Members and common charges from the Members, including the filing of liens and prosecuting foreclosures as provided in the Covenants or by law;

5. Obtain necessary insurance for the Association, the Association's property, the Board, officers and employees of the Association and provide for the use and disposition of the insurance proceeds in the event of loss or damage;

6. Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers, agents, employees, or committee members of the Association;

7. Register the addresses and phone numbers of the Members with the Secretary of the Association, and notices of meetings mailed or faxed to them at such addresses shall be valid notice thereof;

8. Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees as the Board of Directors designates from time to time by resolution as provided in these Bylaws;

9. Enforce obligations of the Members to the Association as provided in the Covenants;

10. Adopt Rules and Regulations from time to time for the conduct of the affairs of the Association and the enjoyment of the Members, provided that no Rule or Regulation so adopted shall be in conflict with Montana law, the Covenants, the Articles of Incorporation or these Bylaws, and provided further that no Rule or Regulation shall be so construed so as to impair in any manner the lien of any mortgage or deed of trust with respect to any of the property if such Rule or Regulation is promulgated after the recordation of said mortgage or deed of trust;

11. Establish reasonable reserve funds for emergencies and unforeseen contingencies and for the repair and replacement of community property;

12. Pay the expenses of the Association, including all taxes or assessments;

13. Keep records in a good and businesslike manner of all assessments made, all expenditures and the status of each Member's accounts, and make such records accessible at reasonable times to all Members;

14. Do any and all things necessary to carry into effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the Covenants;

15. Negotiate and enter into agreements with public agencies, officers, boards, commissions, departments and bureaus of federal, state and local governments to carry out the above powers, duties and responsibilities; and

16. Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner that is not inconsistent with any provisions of the Covenants, Articles of Incorporation or these Bylaws.

C. Nomination of Directors. Prior to each Annual Meeting, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every Member in good standing who has a bona fide interest in serving as a Director may file as a candidate for any position to be filled by votes of the Membership Interests. The closing date shall allow time for the ballots to be mailed with the notice of the Annual Meeting to the Members. The Board shall also establish such other Rules as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner.

Nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee shall consist of two Members of the Board, one of whom shall be chairman, and three or more Members in good standing. The Nominating Committee shall be appointed by the Board to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine. Nominations shall also be permitted from the floor at the Annual Meeting. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

D. Election and Term of Office. At the first Annual Meeting, the Board of Directors shall be elected by the Members. The three nominees from Glastonbury North and the three nominees from Glastonbury South, respectively, receiving the most votes shall be elected for terms of two years each and the remaining nominees receiving the least votes from their respective areas shall be elected for terms of one year each. Thereafter, at each subsequent Annual Meeting, Directors shall be elected for terms of two years to fill any open positions. The members of the Board shall hold office until their respective successors have been elected by the Members and duly qualify. The initial Directors appointed by the Incorporator shall act until the first election of Directors has been held at the first Annual Meeting. Only Membership Interests arising from ownership in Glastonbury North may vote for Directors representing Glastonbury North and only Membership Interests arising from ownership in Glastonbury South may vote for Directors representing Glastonbury South. Glastonbury North and South shall be as defined in the Covenants.

E. Vacancies. Vacancies in the Board of Directors between Annual Meetings, caused by any reason, shall be filled by a vote of a majority of the remaining members of the Board at a Special Meeting of the Board held for that purpose, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors for the remainder of the term of the member whose term he is filling and until his successor shall be elected and shall qualify.

F. Directors' Meetings. All business of the Board other than confidential matters (in the discretion of the Board) shall be conducted in an open meeting. Meetings of the Board may be called at any time by the President or a quorum of Directors and may be held at any time and place upon the giving of reasonable notice. Any or all Directors may participate in a meeting by or conduct the meeting through the use of any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

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FILED
BY *Milly Draclenburg*

1 HON. BRENDA R. GILBERT
2 District Judge
3 Sixth Judicial District Court
4 414 East Callender Street
5 Livingston, Montana 59047
6 406-222-4130

7 MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

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

10 Petitioners,)

11 vs.)

12 BOARD OF DIRECTORS FOR GLASTONBURY)
13 LANDOWNERS ASSOCIATION, INC. (GLA),)
14 DENNIE RILEY, DANILE KEHOE, MARK)
15 SEAVER, RICHARD JOHNSON, CHARLENE)
16 MURPHY, KEVIN NEWBY, LEO KEELER, and)
17 Other Does,)

18 Respondents.)

CAUSE No. DV 17-150

ORDER GRANTING TEMPORARY
RESTRAINING ORDER AND
ORDER SETTING HEARING

19 THE COURT has reviewed Petitioner(s) Motion for Temporary Restraining Order and
20 Motion to Show Cause Why a Preliminary Injunction Should Not Issue and Declaratory Judgment
21 Hearing Motion. The Petitioner, Kathleen Rakela, has alleged violations of the Association's rule-
22 making requirements that would directly impact her rights regarding the December 2, 2017
23 election. Petitioner Rakela further alleges that an unpaid assessment for her property in North
24 Glastonbury is being impermissibly used to disqualify her from being on the ballot for election of
25 Board Members for the South Glastonbury Board of Directors. It appears to the Court that a delay
26 in granting the relief set forth below would cause immediate and irreparable injury to Petitioner
27 Rakela before the adverse party or the party's attorney could be heard in opposition. Given that
28

1 there is insufficient time for service and an opportunity for Respondents to respond prior to the
2 December 2, 2017 election, and the need to preserve potentially crucial evidence, the Temporary
3 Restraining Order is entered pursuant to §27-17-315, M.C.A. to enjoin the Respondents pending a
4 hearing and further Order of the Court.
5

6 IT IS HEREBY ORDERED AS FOLLOWS:

- 7 1. The GLA annual election now scheduled for December 2, 2017 is hereby postponed
8 until this matter is resolved by further Order of the Court. The existing Directors' terms
9 shall be extended pending a later election date.
10
11 2. The election ballots already cast for Petitioner Rakela and Marshall Haley shall be
12 preserved until further Order of the Court.
13
14 3. The recordings of GLA Board meetings and Election Committee meetings from August,
15 2017 through the present shall be preserved until further Order of the Court.
16
17 4. A hearing on whether the Court should issue a preliminary injunction shall be held on
18 Tuesday, January 2, 2018 at 1:30 p.m. The hearing shall be strictly limited to two
19 hours, with each side having one hour in which to present testimony and evidence.
20
21 5. The Petitioner shall be responsible for serving this Order upon the Respondents no later
22 than five (5) days prior to the hearing.

23 DATED this 29th day of November, 2017.

24 
25 BREND A. GILBERT, District Judge

26 cc: Kathleen Rakela

27 Alana Griffith by email & US Mail

} not
11-29-17
MB

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 *Milly Buelow*
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.

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
17 Does,

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

18 Defendants,

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

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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8. Section 12.01 of the Covenants states: "The Association reserves the right to waive or grant variances to any of the provisions of this Declaration, where, in its discretion, it believes the same to be necessary and where the same will not be injurious to the rest of the Community."
 9. Article V, Paragraph F of the Bylaws states: "Each Member in good standing as defined in the Covenants, or any person designated by them to act as proxy 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."
 10. Section 3.19 of the Covenants defines a Member of the Association in Good Standing as "A member of the Association that is current in the payment of all assessments to the Association and is not in violation of these covenants. A member in good standing is qualified to vote as provided herein and in the bylaws and rules of the Association."
 11. The GLA Board of Directors has interpreted the above definition to mean that, to vote, a member must be current on all assessments, regardless of the number of Lots the member owns and corresponding membership interests the member may vote if in good standing. The GLA Board of Directors has also interpreted the above definition to mean a member may not be in violation of any Covenants, regardless of the location or circumstances of the violation.
 12. Section 11.03 of the Covenants states: "The annual assessment shall be payable either annually on or before January 31 or quarterly in four equal increments on or before January 31, April 30, July 31 and October 31 of each year."
 13. Section 11.06 of the Covenants dictates that penalties and interest begin to accrue on unpaid assessments 30 days after the due date.
 14. Article VI, Paragraph C of the Bylaws states: "Prior to each Annual Meeting, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every

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

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

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.
20

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.
25

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
28

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.

14
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.
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26. Plaintiff maintains she transferred the newly created Lot to her son. MT Cadastral and Montana property records still show both Lots 53B and 53C with Plaintiff listed as the primary owner. No deed showing the Lot was transferred has been produced. COS 2546CO states "Tract 53C is to be transferred to my son, Parsifal Pittendorfer." It does not actually transfer the tract.
27. Section 10.04 of the Covenants states: "Each Landowner agrees to notify the Association in the event of sale or transfer of any of the Landowner's property in the Community qualifying as a Membership Interest."
28. If the GLA does not know of transfers, it is deprived of assessments, and it cannot send ballots and other notices to the new landowner.
29. After inquiries with Plaintiff, the Board discussed the situation at its regularly scheduled meeting on October 9, 2017. The Board found Plaintiff in violation of Section 10.04 of the Covenants. Her violation was during the nomination period for the upcoming election calling into question whether or not she was in good standing during the nomination period. There were two votes. The first vote was to accept Plaintiff as a candidate, and it failed with 1 in favor, 9 opposed, 1 recusal and 1 abstention. The second was to disqualify Plaintiff as a candidate, and it passed with 8 in favor, 1 opposed, 1 recusal and 2 abstentions. Plaintiff was disqualified because she was in violation of the Covenants during the nomination period. Plaintiff asserts three Board members should not have voted due to a conflict of interest, but even if they had recused themselves, the results would have been the same.
30. At this point, absentee ballots had been mailed and 20 ballots had already been returned. So the Board voted to postpone the annual meeting to December 2, 2017 to give time to notify

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 C. The plain language of Section 3.19 of the Covenants defines a member in good standing as a
7 person who is current on *all* assessments and not in violation of the Covenants. The word "all,"
8 understood in its ordinary and popular sense includes every assessment a member may owe
9 whether on one or multiple Lots. There is no exception for multiple Lots.
- 10 D. The Board interprets Covenant Section 3.19 to mean that a member must be current on all
11 assessments for every Lot owner in order to be eligible to vote. This interpretation is reasonable
12 and correct.
- 13 E. Plaintiff's contention that Section 3.20 of the Covenants somehow grants an exception to owners
14 of multiple Lots is unreasonable. That Section simply defines membership interests and grants one
15 membership interest per Lot owned. It does not change the requirement that a member in good
16 standing must be current on all assessments.
- 17 F. The GLA Board of Directors has broad discretionary rule-making authority under its Covenants
18 and Bylaws for the general affairs of the GLA and the conduct of elections.
- 19 G. The GLA Board of Directors also has the power to grant variances or waivers to the Covenants if
20 necessary and not injurious to the community. It stands to reason the Board has the power to deny
21 a variance or waiver under the same conditions.
- 22 H. The plain language of the Covenants requires assessments to be paid by certain deadlines with
23 October 31 being the due date for fourth quarter payments.
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- 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
- 5 J. This rule does not unduly burden members as the annual meetings are typically held the second
6 Saturday of each November. Thus, any member who wants to pay assessments on election day is
7 simply required to pay a few days sooner.
- 8 K. The justification for this rule is reasonable as it alleviated problems with accounting and applies
9 the Covenants fairly to all members.
- 10 L. Notice of these election rules was sent five times to members and constitutes adequate notice of
11 the procedures.
- 12 M. Plaintiff maintains she transferred the Lot created in 2016 to her son, but property records still
13 show the Lot is in her name and no Deed or Realty Transfer Certificate evidencing the transfer
14 has been produced.
- 15 N. Plaintiff represented to the GLA Board of Directors in October of 2017 that the Lot had been
16 conveyed to her son. Based on this information, the Board found that she had violated Section
17 10.04 of the Covenants for failing to notify the GLA of the transfer. Her violation was during the
18 nomination period which made her not in good standing and disqualified her as a nominee.
- 19 O. Either Plaintiff was in violation of Section 10.04 of the Covenants because she failed to notify the
20 GLA of the transfer and/or she was not current on her assessments for the new Lot. Either way,
21 she was not in good standing during the nomination period although the Board made its
22 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 R. Plaintiff has cured the assessments due on the new Lot. However, the Court is not satisfied Plaintiff
8 has provided adequate proof of the transfer of ownership by her son. While Plaintiff maintains she
9 transferred the Lot to her son, no records evidence that. The GLA is put into a difficult position as
10 to whom to bill for assessments and who is entitled to vote the Lot's membership interest. Until
11 some evidence of the transfer is produced by Plaintiff, the GLA is entitled to rely on the existing
12 records within MT Cadastral to determine ownership, assessments, voting and whether or not
13 Plaintiff is in good standing.
- 14 S. All parties have agreed to hold a make-up election under the terms of what was marked Court's
15 Exhibit 1. This includes a new nomination period for new nominees. Given this agreement, the
16 issue of whether Plaintiff was in good standing during the August 1, 2017 to September 13, 2017
17 nomination is moot. Additionally, because new ballots will be issued and cast, the ballots already
18 cast for Plaintiff or Marshall Haley are moot insofar as they will not be counted in the make-up
19 election.
- 20 T. There is no immediate or irreparable injury to Plaintiff, and the TRO dated November 29, 2017 is
21 hereby vacated. The existing Directors' terms shall be extended only to the next Director's
22 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.

6
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.

13 **II.**

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

17
18 DATED this 19th day of June, 2018.

19
20
21 Brenda R. Gilbert
22 Hon. Brenda R. Gilbert, District Court Judge

23
24 c: Jami Robson
25 Seth Cunningham

26 } initial
27 6-19-18
28 } MB