

December 16, 2020

RE: C&P 3068-3

Missouri River and Eagle Canyon Ranches Landowners Corporation

Russ and Linda Greaves


Dear Mr. and Mrs. Greaves,

As you are aware, I represent the Missouri River and Eagle Canyon Ranches Landowners Corporation (Corporation). The Corporation's Board of Directors (Board) asked my office to respond to your correspondence dated November 6, 2020.

In your letter, you accuse Dennis Greany and other Board members of breaching their fiduciary duties to the Corporation. Although your letter includes a wide range of accusations, they generally fall within the following categories: Mr. Greany allegedly failed to immediately provide you the membership list at the 2020 Annual Meeting; Mr. Greany is allegedly furthering his private interests by enforcing the covenants; the Board has failed to review a conversation between yourself and prior Corporation representatives; the Board is allegedly illegally enforcing the covenants and collecting assessments; and the Board improperly instituted proxy procedures. Your accusations that the Board and/or certain of its members have breached their fiduciary duties to the Corporation are unsupported by Montana law and the Corporation's governing documents.

Under Montana law, the Corporation's corporate powers are exercised by or under the authority of the Board, and the business and affairs of the Corporation must be managed under the direction of the Board. Section 35-2-414, MCA. As you note in your letter, members of the Board occupy a fiduciary relationship to the corporation and, in turn, its members. This fiduciary relationship requires that a Director perform their duties in good faith, in a manner the Director reasonably believes to be in the best interests of the Corporation, and with the care that an ordinarily prudent person would exercise under similar circumstances. Section 35-2-416(1), MCA.



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The Board meets its fiduciary duties, in part, by governing the Corporation pursuant to the Corporation's Articles of Incorporation and the Corporation's Bylaws. Under Montana law, these governing documents may contain any provision for regulating the affairs of the Corporation that is consistent with the Montana Nonprofit Corporation Act and other applicable laws. In analyzing whether a board has met its fiduciary duties and governed a corporation pursuant to Montana law, the corporation's articles, or its bylaws, courts look to whether Montana statute, the articles, or the bylaws grant the board the authority to take the proposed action. Generally speaking, Montana law and courts interpreting that law recognize that nonprofit corporation boards have a certain amount of discretion in reaching decisions on behalf of the corporation. As demonstrated below, the accusations you have made against the Board do not constitute a breach of fiduciary duty because the Board has acted within Montana law, the Articles, and the Bylaws.

As you note, Montana law requires the Board to have a member list available for inspection by any member at the Annual Meeting. Section 35-2-535(2) & (3), MCA. Nothing in the statute requires the Board to provide the member list immediately upon demand; instead, the statute simply requires that the list be available for inspection. As you acknowledge, the Board met this obligation and provided you with the member list for inspection during the Annual Meeting. The Board therefore complied with its statutory obligations.

In your letter, you state that the Board could not "legally conduct this vote" if it did not have a membership list or if the Board did not provide the membership list to you for inspection. Your assertion is contrary to Montana law. Even if the Board did not have the membership list available at the meeting – which it did – or even if the Board refused to allow you to inspect the membership list at the meeting – which it did not – the actions taken at the Annual Meeting would still be valid. Montana law explicitly provides that a corporation's refusal or failure to comply with a member's request to inspect the membership list "does not affect the validity of action taken at the meeting" unless the member submitted a written demand to inspect and copy the membership list pursuant to certain statutory requirements. Section 35-2-535(5), MCA. You did not submit a written demand to inspect the membership list in compliance with the statutory requirements. Accordingly, even if the Board had refused your request – which you acknowledge it did not – the actions taken at the Annual Meeting would still be valid.

Your assertion that Mr. Greany and/or other Board members are allegedly breaching their fiduciary duties by enforcing the Covenants and collecting assessments are similarly misplaced. It is worth noting that every member of the Corporation purchased their

property subject to the recorded Covenants. Under Montana law, the Covenants run with the land and are therefore binding upon every member of the Corporation. Sections 70-17-201, 76-3-306, MCA. The Corporation's Bylaws are similarly binding upon all members of the Corporation. In fact, the Bylaws constitute a contract between the Corporation and the member pursuant to which the member agrees to submit to the rules and regulations contained within the Bylaws. In short, by purchasing property in the subdivisions – which are subject to duly recorded and adopted Covenants and Bylaws – every member of the Corporation agreed to be bound by the Covenants and Bylaws.

The Corporation's Bylaws explicitly require the Board to enforce the Covenants. (Bylaws, Section 1.2(b); Article IX.) The Covenants, in turn, articulate the procedures by which the Corporation must enforce them. (Covenants, Article X.) These procedures include filing a lien against the property of someone who has been found to be in violation of the Covenants. (Covenants, Article X.) The Bylaws also provide that the Board must formulate and implement the Corporation's budget and determine and implement assessments to ensure the payment of budgeted expenditures. (Bylaws, Sections 8.1-8.3.) The Bylaws provide further that the Board may file a lien against a member's property who has failed to pay assessments. (Bylaws, Section 8.4.)

As discussed above, the Board's fiduciary duties to the Corporation require that the Board govern the Corporation pursuant to the Corporation's governing documents (e.g., the Covenants and the Bylaws). The Corporation's governing documents require that the Board enforce the Covenants and implement assessments necessary to cover budgeted expenses. The governing documents also provide certain mechanisms by which the Board can enforce the Covenants and the payment of assessments. Your assertion that the Board has breached its fiduciary duties by enforcing the Covenants and collecting assessments runs counter to well-established Montana law. In fact, if the Board were to not enforce the Covenants or charge assessments, as your letter seems to suggest it should, the Board would not be managing the affairs of the Corporation pursuant to its governing documents.

Your assertion that the Board has somehow breached its fiduciary duties by implementing a proxy voting procedure is likewise misplaced. Both the Nonprofit Corporation Act and the Bylaws provide that members may appoint a proxy to vote on their behalf. Section 35-2-539, MCA; (Bylaws, Section 2.4.) Neither the Act nor the Bylaws, however, specify the procedures by which a member may appoint a proxy. As discussed above, Montana law grants the Board discretion in governing the Corporation's affairs. The Bylaws similarly grant the Board discretion to "establish the policies and the

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programs of the Corporation.” (Bylaws, Section 4.5.) Establishing a procedure by which a member may appoint a proxy falls within the Board’s discretionary powers.

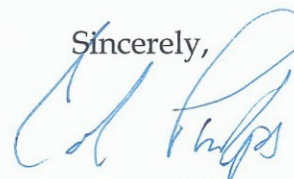
As you note, the Board ultimately did not enforce its proxy voting procedure and allowed members to vote by proxy at the Annual Meeting pursuant to historically-utilized procedures. The Board’s decision to do so did not violate the members’ voting rights. As you note, Montana law provides that “unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.” Section 35-2-536(1), MCA. The Corporation’s Bylaws contain explicit provisions articulating which class of members is entitled to vote on certain issues. (Bylaws, Sections 2.2, 2.3, & 4.2.) The Board did not restrict members’ rights to vote pursuant to these provisions or Montana law.

Finally, your assertion that the Board has breached its fiduciary duty by failing to review a recorded audio conversation between Mr. Greaves and two prior Corporation representatives is unfounded. Under Montana law, in discharging their duties directors are “*entitled* to rely on information, opinions, reports, or statements” prepared or presented by certain specifically articulated persons or classes of persons. Section 35-2-416(2), MCA (emphasis added). Nothing in the Montana Nonprofit Corporation Act—or the Bylaws for that matter—requires the Board to consider each and every piece of information available to it. As discussed above, the Board has discretion in governing the Corporation. This discretion includes the ability to consider a wide range of information in discharging its duties.

The grounds upon which you rely to accuse the Board and/or certain of its members of breaching their fiduciary duties to the Corporation run counter to Montana law and the Corporation’s governing documents. Accordingly, it is my opinion that the Board has not breached their fiduciary duties to the Corporation.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Colin Phelps

cc: ~~Board of Directors~~