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Gary D. Hall, Chairman (via email: ghall@co.flathead.mt.us)
Joseph D. Brenneman, Member (via email: jbrenneman@co.flathead.mt.us)
Dale W. Lauman, Member (via email: dlauman@co.flathead.mt.us)
Board of County Commissioners
Flathead County
800 South Main Street
Kalispell, MT 59901-5435

RE: Whitefish Interlocal Agreement

Dear Commissioners:

I am writing in regards to your March 13, 2008, agenda item regarding the County's Interlocal Agreement with the City of Whitefish. Whitefish learned of this meeting after its last Council meeting, and so the Council has had no opportunity to formally adopt a response. The views expressed herein, and the language used, are my own, although I believe they represent the views of a majority of the Whitefish City Council.

I previously forwarded to you a copy of my February 28, 2008, letter to Attorney Tammi Fisher. I refer you to it for a history of the planning and zoning relationship between Flathead County and the City of Whitefish.

The upcoming Commissioners' meeting invokes a feeling of déjà vu. Six years ago former Commissioner Dale Williams threatened to have the County unilaterally dissolve the City's extraterritorial planning jurisdiction. I attended a number of meetings where, together with others, I was able to persuade the Commissioners not to do so. Fortunately, Commissioners Watne and Gipe had the good sense not to attempt to unilaterally dissolve a relationship that had existed for some 35 years. For the final two years of Dale Williams' tenure, I carried a lawsuit in my briefcase, ready to file in District Court if he was successful in persuading a second Commissioner. Fortunately, cooler heads prevailed. But that era was characterized by hostility, divisiveness, bullying, and threats. It was a miserable time to be involved in local government.

When Gary Hall replaced Dale Williams, the relationship between the parties improved immediately. Gary was interested in calming the waters and recreating the good faith and cooperation that existed before the Williams' era. Particularly in the area of planning and zoning, Gary sought to find a cooperative solution between the parties. Gary expressed repeatedly that Whitefish was

entitled "to control its own destiny." He proposed that the City accept a reduction in its planning jurisdiction from four and one-half miles to two miles outside its City limits, but offered to allow the City to have complete planning, zoning and subdivision control within the two-mile doughnut.

At first the City was not easily persuaded. Some citizens and some City Councilors objected to the loss of the traditional four and one-half mile zone. Some worried that if the City agreed to shrink its jurisdiction, some later Board of Commissioners would demand a further reduction. Some citizens in the proposed two-mile jurisdiction objected to being subject to the City's zoning control without the ability to elect City Councilors. Nevertheless, after approximately two years of negotiations and numerous public hearings, the Commissioners and the City Council were near agreement.

The Interlocal Agreement, which I drafted, was carefully reviewed and revised in several meetings involving Gary Hall, County Planning Director Forrest Sanderson, Deputy County Attorney Jonathan Smith, and myself. Having suffered through two years of Dale Williams' treats to unilaterally reduce the City's extraterritorial jurisdiction, the City was not willing to allow itself to be placed in that position again. Early in the negotiations, I emailed a draft of the Interlocal Agreement to Jonathan Smith and Forrest Sanderson, together with the following comment:

One of the important features from my point of view is the term of the Agreement. If we allow either party to unilaterally terminate the Agreement, we will be in no better position than we are today. For that reason I provided that the Agreement will be reviewed every five years, but can only be amended or terminated by **joint agreement** of the parties. I urge you to retain these provisions, in one form or another.

The draft attached to my email contained the following phrase, in Paragraph 12 (eventually Paragraph 15):

The provisions of this Agreement may be waived, altered, amended or repealed in whole or in part, or terminated, only upon the written **consent of all parties** to this Agreement.

Later, an additional sentence was added to Paragraph 15 to provide:

The duration of this Agreement shall be until the parties **mutually** terminate it.

Finally, Paragraph 14 of the final version provided:

The parties shall meet yearly to discuss generally the topics covered by this Agreement. Every five (5) years after the execution

of this Agreement the parties shall meet to review the jurisdictional areas identified herein to **jointly** determine whether any modification is warranted.

Thus, it was stated repeatedly by the parties that neither the Agreement nor the jurisdiction created by the Agreement could be altered without the mutual agreement of the parties. This point was never controversial.

There were no unwritten side agreements requiring that Whitefish conduct its planning, zoning or subdivision review in any particular manner, or avoid any particular method or approach. Paragraph 15 of the final document provides:

There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto relating to the subject matter contained in this Agreement which are not fully expressed herein.

Paragraph 5 of the Agreement made it clear that the City would have "sole power" to plan, zone, and administer its subdivision regulations within the two-mile extraterritorial zone. These provisions were not controversial. In fact, they were precisely what Gary Hall proposed from the start.

The final Agreement was formally approved by the County Commissioners and the Whitefish City Council. It was signed by Gary Hall as Chairman of the Board of Commissioners, and by Whitefish City Manager Gary B. Marks. The City and County staff then cooperated to accomplish a smooth transition over the following eight months.¹

In reliance upon this written Agreement, the City entered into a new lease for office space, and increased its planning staff from one part-time planner to three full-time planners, with several support staff. The City, in cooperation with the Department of Natural Resources and Conservation, annexed all of Whitefish Lake. The City extended zoning to hundreds of acres of previously unzoned land, and rezoned large areas, including the entire Big Mountain area. The City adopted a new growth policy covering its entire new jurisdictional area.

Commissioner Gary Hall, who could be called the "Father of the Interlocal Agreement," now wants to rescind it because, in controlling its destiny, Whitefish did not do it the way he would have. Obviously, after contracting that Whitefish would have "sole power" to exercise planning, zoning and subdivision review, that is not a valid ground for questioning the Agreement. In fact, there is no valid ground for questioning the Agreement. It is a binding contract, plain and simple. Who does not understand what that means?

¹ At the request of Flathead County, the City also agreed to take over all lakeshore protection regulation as well as all floodplain regulation within the new two-mile zone.

The Commissioners would be well advised to consult with Deputy County Attorney Jonathan Smith, who worked with me to craft an agreement that neither party could unilaterally withdraw from. One cannot rescind an agreement merely because one did not obtain the desired result. And as the City said to Dale Williams six years ago when he tried the same tactic, we will insist on protecting the City's jurisdiction, without compromise.

It is sad and bitter irony that the man who replaced Dale Williams is now guilty of the same shenanigans that he so frequently practiced. The more things change, the more they stay the same.

An effective working relationship between the City and the County depends on forthrightness, honor, and fair dealing between their elected officials. If the Flathead County Commissioners cannot be relied upon to honor an agreement of this stature, what credibility do they retain? What do they stand for?

If there is a concern on the part of the Commissioners that the residents of the Whitefish doughnut area need some effective representation, rest assured that the Whitefish City Council shares that concern. On Monday, March 17, the Whitefish City Council has scheduled a workshop to devise a method to approach the residents of the doughnut area to ascertain their varied views and inquire concerning the type of representation they desire. The Council is proceeding in this direction not because of Gary Hall's threats, but because it is the right thing to do. At the same workshop the Council will discuss arranging a special meeting with large landowners whose property is located primarily in the doughnut, to deal with their special concerns.

In summary, let Whitefish be Whitefish. Honor your agreements. Work with us to solve mutual problems. But do not underestimate our resolve.

Thank you for considering these views.

Very truly yours,

/s/ John M. Phelps

John M. Phelps

JMP/klh

cc (via email):

Mayor Jenson and City Councilors
Gary B. Marks, City Manager
Jonathan B. Smith, Deputy County Attorney
David Taylor, Planning and Building Director