

## Questions for Councilors to ask John Phelps about his January 12, 2010 memo

**Chance of passage:** You list six ideas that would require legislative changes. What are the chances that the legislature would adopt any of them? You acknowledge that our doughnut controversy “appears to be a unique Flathead County issue,” so legislators from the rest of Montana probably won’t care about it, and we assume that doughnut residents—and probably their representatives—will be opposed to these changes. Leaving out legislators from the rest of Montana, can you name any legislator from the Flathead delegation who might be inclined to support this type of Whitefish bill?

**Timing:** The next legislature meets in January 2011, and if the legislature passed a bill and the governor signed it, the law probably would take effect in October 2011, more than 20 months from now. If it provided for doughnut representation, the filing deadline for the 2011 elections will have passed, so the next city election would occur in 2013. If doughnut representatives were elected at that time, the representatives would be seated in January 2014. Should doughnut residents wait four years for representation?

**Left out current law:** In your memo you did not address existing law, Section 76-2-311, which provides:

76-2-311. **Administration of regulations in extended area.** (1) A city or town council or other legislative body may enforce regulations [in the doughnut area] adopted pursuant to 76-2-310, as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

Can you explain how this process in existing law works and why do the doughnut residents even need city representation if the county adopts a growth policy and zoning?

**What do doughnut “representatives” vote on:** In your memo, you imply that the city would be better off to allow doughnut representatives only to vote on “zoning issues affecting the doughnut,” otherwise it might transfer control of the city from city residents to doughnut residents. How would the city council decide what the doughnut representatives get to vote on. For instance:

- (a) The city manager picks the planning department personnel, who will regulate the doughnut. Shouldn’t the donut representatives vote on the hiring the city manager?
- (b) The application and subdivision fees have been part of our budget process. The doughnut residents will pay these fees. Shouldn’t the doughnut representatives vote on the budget.
- (c) The building code, dark sky ordinance and other ordinances apply to the doughnut. Shouldn’t the representatives vote on these matters?

If the doughnut representatives don't vote on all matters, how does the city council mechanically decide what the doughnut representatives votes on? Would that be done by motion? If so, do the doughnut representatives get to vote on this motion? If they don't, couldn't the non-doughnut councilors effectively block the doughnut representatives from voting on anything?

**Application of existing law to donut:** If the legislature allows doughnut representatives, would the city repeal the laws that currently apply to the doughnut, then re-enact them so the doughnut representatives—and the doughnut residents—have a say on these laws? Specifically, would the city repeal the CAO, then run it through the process again, this time with doughnut representation? If the city doesn't do this, isn't the idea of "representation" a sham?

**Binding Interlocal Agreement:** In discussing the existing interlocal agreement and the lawsuit you filed against the county, you write:

[The County] has also taken the position that when it enters into an Interlocal Agreement, it can do so only for a short term of years...Until the courts have confirmed that interlocal agreement are binding on the county, it seems to be a futile effort [to enter another one].

In fact, doesn't state law require that an interlocal agreement specify its "duration," (see, Section 7-011-15, MCA), and the interlocal agreement that the county rescinded doesn't specify any duration—in fact, it could go on forever? Is it your legal position that the existing interlocal agreement, which could go on forever, might legally bind future county commissioners and future city councilors 500 years from now?

**Initiative and referendum:** You write that the "Legislature could expand the rights of initiative and referendum to the residents of the doughnut, so that they could force an election on an unpopular zoning ordinance, or propose their own zoning ordinance." Rather than change existing law, what if the City held a mail-in ballot for doughnut residents only, and the question would be: Do you want to be governed by the city or county? The city could agree to be bound by the voters' decision.

Our Declaration of Independence declares that governments "deriv[e] their just powers from the consent of the governed." If the majority of doughnut residents don't want city rule, why should the city be forced on them, in violation of the spirit of our founding document and principles? Under existing law, would this type of election be possible?

**Negotiations:** Since the city filed this lawsuit in March 2008, we have elected a new county commissioner and three new city councilors. Why not ask the county to appoint three people to negotiation a resolution, and the city appoint three representatives, and these six people report back to the council in 60 days? Despite this lawsuit is nearly two years old, it's still stuck in district court, with at least a year—and probably two years—from a final decision. Why should elected officials expect unelected lawyers to solve this dispute. Why shouldn't city representatives meet with the county or exchange written settlement proposals?