

RESOLUTION NO. 2297

WHEREAS on March 13, 2008, the Board of County Commissioners approved Resolution No. 1733B, rescinding the County's approval of the 2005 Interlocal Agreement between the County and the City of Whitefish.

WHEREAS on March 18, 2008, the City of Whitefish filed a lawsuit against Flathead County alleging that its resolution to rescind the 2005 Interlocal Agreement should be declared void. The lawsuit is styled City of Whitefish v. Board of County Commissioners of Flathead County, DV 08-367A.

WHEREAS on May 1, 2008, the District Court denied Whitefish's motion for preliminary injunction. Whitefish appealed that decision to the Montana Supreme Court. On December 23, 2008, the Supreme Court reversed the District Court, and ordered the Court to enter a preliminary injunction pending a trial on the merits.

WHEREAS in 2009, the District Court allowed Hieko and Elizabeth Arndt and Westridge Development LLC to intervene.

WHEREAS during the summer and fall of 2009, the parties filed motions for summary judgment. After these motions were filed, the parties requested that the District Court refrain from issuing a decision on the merits while the parties engaged in settlement discussions.

WHEREAS in early 2010, the County and City appointed a "doughnut resolution committee" to seek compromise and settle the lawsuit. Over the course of about seven months, this committee held nine public meetings, with the last meeting in September 2010. The Whitefish City Council held at least four public meetings on the lawsuit settlement with its last meeting on November 15, 2010. The County Commission held two public hearings, with its last meeting on November 30, 2010. All together, there were at least 16 public meetings to seek public input and fashion a settlement.

WHEREAS as a result of these settlement discussions, the City and County entered the 2010 "Restatement of Cooperative Interlocal Agreement." Both parties agree, as their lawyers have set forth in pleadings, that 2010 Agreement now "is in effect and fully operational."

WHEREAS in the spring of 2011, a group of Whitefish activists gathered signatures to force a referendum on the ordinance whereby Whitefish granted approval to the 2010 Agreement. This referendum has been certified for the Whitefish 2011 general election ballot in November. This referendum fatally attacks the compromise and settlement reflected in the 2010 Agreement and when all of the legal questions about the referendum are litigated in district court and then appealed to the Montana Supreme Court, there will be at least three to five more years of uncertainty and attorney's fees.

WHEREAS the only way to end many more years of litigation, and to grant representation to doughnut property owners, is to terminate the Interlocal Agreement.

WHEREAS the process for termination is set forth in paragraph 13 of the 2010 Agreement which provides in part:

A party may withdraw from this Agreement upon lawful resolution passed by the governing body of that party and service of written notice thereof on the remaining party at least one (1) year prior to the requested date of termination. During the one-year period of time from notice of the requested withdrawal and termination of the Interlocal Agreement, the party providing notice shall specify the nature and grounds for withdrawal within ten (10) days of the date of the notice, and allowing the remaining party ninety (90) days to investigate and propose a resolution.

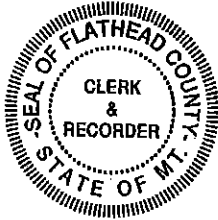
After ninety (90) days from the date of the notice for withdrawal, if the parties are unable to reach a mutually agreeable resolution, the parties shall attempt to resolve the stated ground for the withdrawal and termination of the Interlocal Agreement through non-binding mediation, and, the parties shall jointly select a mediator. In the event the parties do not voluntarily and timely select a mediator within fifteen (15) days from the mediation request, the eleventh judicial district court on application of a party shall appoint a mediator. The mediator so appointed by the parties or the district court shall assist the parties to attempt to resolve their difference as provided by Section 26-1-813, MCA.

This Agreement shall remain in full force and effect for the parties throughout the full one (1) year period of time following service of notice of the withdrawal of a party.

WHEREAS the County expresses its appreciation to the Whitefish City Council and its individual councilors who worked tirelessly to resolve the doughnut dispute. It is regrettable that the referendum sponsors have attacked this compromise and left Flathead County with no choice but to terminate the Interlocal Agreement.

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the Board of Commissioners of Flathead County, Montana, that Flathead County hereby gives notice to the City of Whitefish that the Interlocal Agreement with the City of Whitefish governing the doughnut shall terminate one year from the date this resolution is served on the City of Whitefish. The Chairman of the Board is authorized to deliver the letter to the City of Whitefish in substantially the form as set forth in Exhibit "A."

DATED this 22 day of June, 2011.



BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By James R. Dupont
James R. Dupont, Chairman

By Dale W. Lauman
Dale W. Lauman, Member

By Pamela J. Holmgvist
Pamela J. Holmgvist, Member

ATTEST:

Patricia Robinson, Clerk

By Diana Kile
Diana Kile, Deputy

Exhibit "A"--Letter to the Whitefish City Council

Flathead County
Board of Commissioners
(406) 758-5503



James. R. Dupont
Pamela J. Holmquist
Dale W. Lauman

June 22, 2011

Mayor Mike Jensen
Councilor Turner Askew
Councilor Chris Hyatt
Councilor Bill Kahle
Councilor Phil Mitchell
Councilor John Muhlfeld
Councilor Ryan Friel
City of Whitefish
P. O. Box 158
Whitefish, Montana 59937

RE: 2010 Restatement of the Cooperative Interlocal Agreement

Dear Mayor and Councilors:

The county election clerk has certified for the ballot a referendum that seeks to repeal the City of Whitefish's Resolution No. 10-46. This resolution approved the settlement between Flathead County and the City of Whitefish in the "doughnut" lawsuit that Whitefish initiated.

If the Whitefish voters approve this referendum this fall, it will create more litigation that could potentially continue for years. Consequently, this letter is notice of the County's intent to terminate pursuant to paragraph 13 of the 2010 Restatement of the Cooperative Interlocal Agreement. We enclose Resolution No. 2297.

The County and City have worked hard to resolve the doughnut lawsuit. Over the course of many months last year, the settlement committee consisting of city and county officials held nine public meetings to discuss and recommend resolutions to the lawsuit. Our Commission held two public hearings on possible resolution. Your City Council held at least four public meetings on the resolution. All together, we had at least 16 public meetings to seek public input and come to a settlement.

As with any settlement, nobody got everything it wanted. Both parties compromised on issues to make the settlement happen. Both public bodies understood that good neighbors communicate and cooperate, not litigate. Compromise brought us together. Unfortunately, the referendum has fatally attacked this compromise.

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While we at the County had hoped that the 2010 Agreement would allow us to begin a new cooperative relationship with the City of Whitefish, we cannot postpone governance of the doughnut indefinitely while the referendum and its inevitable litigation plays out. The reasons for this are simple.

First, so long as governance of the doughnut remains unsettled, it undermines economic development. This lawsuit has cost the doughnut, and by extension the entire County, jobs, stability, and a return to the economic vitality that we need these days.

Second, the doughnut residents cannot remain in legal limbo with no representation. The doughnut residents deserve representation which we all agreed was provided by the 2010 Agreement. Doughnut residents deserve the same level of self-determination that the City of Whitefish referendum seekers have so robustly exploited for themselves.

Lastly, the only thing certain about the referendum is more lawsuits. The doughnut lawsuit that we settled has been ongoing for three years, and it still is in district court. When the many legal questions about the referendum are litigated in district court and then appealed to the Montana Supreme Court, we can expect at least three to five more years of uncertainty and attorney's fees. We can't afford the insanity of needless attorney's fees and our residents can't afford up to five years of uncertainty.

Our doughnut constituents don't need more litigation and the uncertainty it brings to their property. They are having troubles selling their home. They are reluctant to improve their property, and hire more electricians or plumbers, because they don't know the rules. We need an environment that fosters economic activity, predictable rules of law, a stable real estate market, and more construction activities that create jobs.

It's imperative that we end this legal turmoil. Our county doughnut residents have suffered more than three years of uncertainty about their property arising from doughnut litigation. It is not acceptable or fair that they face a future with more lawsuits. At some point common sense and fairness must triumph over endless pleadings and appeals.


Since both the City of Whitefish and the County agree that the 2010 is in full force and effect ("The City and County agree that the 2010 Agreement is in effect and fully operational...", page 4 of the Board of County Commissioners and City of Whitefish's Reply Brief in Support of Joint Motion for Summary Judgment), we must regrettably deliver this termination notice as of the date of this letter is served.


We recognize that, in accordance with the 2010 Agreement, this withdrawal and termination is not effective for one year. You have 90 days from the date of this letter to propose a resolution, and we must engage in mediation. We look forward to receiving your proposal to end the specter of never-ending litigation and to allow doughnut residents representation, meaning they can vote for or against candidates who will govern them. We also suggest that along with your written proposal, you provide the names of possible mediators.

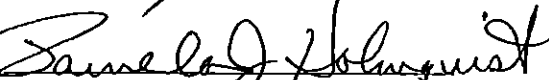
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Councilors Kahle and Hyatt, we recognize your service on the doughnut resolution committee and willingness to work so diligently on this matter. On behalf of the doughnut residents, and the County Commissioners, we thank you and the Whitefish City Council for all efforts to resolve this legal dispute and begin an era of communication and cooperation. We regret that the referendum has attacked the results of this hard work, leaving Flathead County with no choice but to terminate the Interlocal Agreement.

FLATHEAD COUNTY
BOARD OF COMMISSIONERS


James R. Dupont, Chairman


Dale W. Lauman, Member


Pamela J. Holmquist, Member

Enc: Resolution No. 2297