

March 4, 2024

Dear City Commission of the City of Great Falls,

I am a resident of the City of Great Falls. I am writing to provide public comment on Agenda Item 20 (Ordinance 3264, rezoning of 805 2nd Street SW) of the planned City Commission meeting to be held on March 5, 2024.

### **The City of Great Falls Illegal Spot Zoning Legal Analysis is Flawed**

The City of Great Falls planning staff cites the Supreme Court of Montana 2021 opinion in *Hartshorne v. City of Whitefish* in their analysis that the rezoning of 805 2nd Street SW from R-1 Single-family Suburban to M-2 Mixed-use Transitional does not constitute illegal spot zoning. The city's analysis is flawed and leaves the City of Great Falls open to a legal challenge. A legal challenge that the approval of the Bay View Apartments zoning request constitutes illegal spot zoning by the City Commission.

In short, the circumstances of Whitefish's zoning change are not sufficiently similar to the circumstances in Great Falls's proposed zoning change for *Hartshorne v. City of Whitefish* to be used to support Great Falls's proposed zoning decision.

### **The City of Whitefish's Zoning Action was Years in the Making and Specific to a 2.5 Acre Parcel**

At issue in *Hartshorne v. City of Whitefish* is whether or not the City performed illegal spot zoning in the adoption of Ordinance 18-23. The case concerns the Riverside at Whitefish neighborhood center, a 2.5 acre parcel of land. Plans for the neighborhood center had been explicitly identified as commercial in nature since the neighborhood plan was adopted by the City of Whitefish in 1993, and amended in 1999. From page 4 of the Montana Supreme Court opinion (also page 145 of the Great Falls City Commission meeting agenda packet ("the agenda packet")):

"The 1999 Neighborhood Plan "embodies the public policy for the area it addresses." It provides that "[a]ny land use ordinances or regulations, such as zoning or subdivision review, shall be based on this plan[.]"

"A 2.5 acre neighborhood center to meet the demand for basic services created by the walking community and youth athletic facility. The site will be developed under the auspices of a mixed PUD whereby 10% of the gross area of the site can be developed in commercial uses intended to be complimentary to the proposed development of the neighborhood"

Suit was brought by James Hartshorne and Angelo Queirolo in 2018, 25 years after the adoption of the neighborhood plan, and 19 years after the adoption of the amended neighborhood plan. Suit was

brought because the City of Whitefish adopted Ordinance 18-23 that amended the zoning map and allowed the commercial development of the neighborhood center parcel through a conditional use permit (CUP) and supporting city ordinance change, instead of a planned unit development (PUD).

Because the neighborhood plan that contemplated commercial use of the neighborhood center was in place well before the adoption of Ordinance 18-23 that enabled commercial use of the neighborhood center, the Supreme Court of Montana ruled correctly that the City of Whitefish did not engage in illegal spot zoning as outlined in Montana's three-part test:

1. The proposed use is significantly different from the prevailing use in the area.
2. The land area is small from the perspective of the number of separate benefitted land owners from the proposed change.
3. The zoning change is designed to only benefit one or a few land owners.

Importantly, the court evaluated parts two and three together and arrived at the opinion:

“Ordinance 18-23’s permitted commercial uses thus were compatible with the Neighborhood Plan, weighing heavily against satisfaction of the second and third elements.”

Essentially, the zoning action that the City of Whitefish undertook in 2018 was not illegal spot zoning because the neighborhood plan envisioned the commercial use of the land as a public benefit 18 to 25 years earlier. The neighborhood plan explicitly acknowledged and provided for the future commercial development of the neighborhood center. The city’s zoning action merely affirmed the commercial use of a property that had been planned for years.

### **The City of Great Falls’ Proposed Rezoning is Dissimilar to the Whitefish Rezoning, and Therefore *Hartshorne v. City of Whitefish* Does Not Apply to Rezoning the Bay View Apartments Parcel**

The zoning action before the City of Great Falls Commissioners does not fit the fact pattern found in *Hartshorne v. City of Whitefish*.

The land covered by the Bay View Apartments zoning request is currently zoned single family residential. It has had a non-conforming use as a mobile home park and is now vacant. No city, county, or state document exists that explicitly identifies the use of the 4.46 acre parcel as anything except residential. This was not the circumstance in Whitefish—the decades old plan in Whitefish clearly identified a small parcel of land to be developed commercially, and they knew a PUD (later implemented as a CUP coupled with an ordinance change) would be needed to support the plan.

The 2013 Growth Policy Update and Missouri River Urban Corridor Plan cited as support by the City of Great Falls planning department only covers the generalized expected benefits of land use changes. They do not call out the Bay View Apartments land parcel specifically, nor do they call out the Garden Home Tracts neighborhood it is a part of. Further, there is no neighborhood plan specific to the area—it is old and well established. I believe no neighborhood plan exists because the residents felt no plan was needed for the fully developed neighborhood. That was not the circumstance in Whitefish—that was a

pre-planned development with a neighborhood plan and city plan that explicitly called out the uses and expected changes necessary to implement the plan.

### **Conclusion: The City of Great Falls will Arguably be Illegally Spot Zoning the Bay View Apartments Parcel**

In one singular act, the City Commission will replan the use of the parcel and enable its redevelopment to benefit the parcel's land owners/developers at the expense of the surrounding neighborhood.

The city-provided background in the agenda packet page 114 is very clear: "The applicant's rezoning request is to facilitate the sale of the property to developers..." The city knows the owners want to rezone to make a land sale, and are asking for the Commission's assistance in making that sale.

If this zoning request is approved, the City Commission will be on record with the intent to make a zoning change that arguably meets all three illegal spot zoning tests provided by the Supreme Court of Montana in *Little v. Board of County Commissioners*. The subject zoning change request:

1. Is significantly different than the surrounding area: *there are only parks and open space, single family residential, and many-decades-old commercial development (that predates city's growth policy and river corridor plan) in the nearby area;*
2. Rezones a small land area that directly benefits only the current land owners and future developers: *the surrounding residents have been clear and consistent in their disapproval of the rezone request, as evidenced by the formal protest and dozens of pages of public comment found at the end of the agenda packet;*
3. Is specifically designed to benefit the current land owners: *clearly stated in the city-provided zoning request background—the rezone request is to facilitate the sale of the property.*

### **A Respectful Recommendation to the City Commission of the City of Great Falls**

Do not accept Ordinance 3264 and associated rezoning request. Combined with the analysis above, a reasonable basis for the Commission's disapproval can be found in Great Falls's 2013 Growth Policy Update. Section 4.2 on page 164 of the update provides zoning guidance for the physical realm. Specifically, section 4.2.8 states "The City may recommend against spot zoning."

Respectfully,  
Nicholas Sudan