

FILED

OCT 09 2012

Clerk, U.S. District Court
District Of Montana
Missoula

**UNITED STATES DISTRICT COURT
District of Montana
Butte Division**

Montana Fair Housing, Inc.,)	
)	
Plaintiff,)	No. CV-09-90-BU-DLC
versus)	
)	CONSENT DECREE
City of Bozeman, Andy Epple, Vicki)	
Hasler, and the Hinesley Family)	
Limited Partnership #1, Hinseley)	
Development, and Charles Hinesley,)	
)	
Defendants.)	
)	

CONSENT DECREE

1. This Consent Decree is entered between Plaintiff Montana Fair Housing, Inc. (Fair Housing), and Defendant City of Bozeman, Andy Epple and Vicki Hasler (collectively, the City Defendants).
2. Recitations:
 - a. Fair Housing initiated the above entitled action in December 2009 against the City asserting federal and state claims of exclusionary zoning practices and discrimination in property inspection and licensing. Fair Housing alleged that Bozeman's municipal zoning

ordinance discriminates based on disability, age, and marital status. Fair Housing also claimed Bozeman violated Montana law by failing to take affirmative steps to ensure that its zoning and building code enforcement practices are non-discriminatory and compliant with the law.

- b. The City Defendants answered the complaint and denied that they had violated state or federal laws as alleged in the Complaint.
- c. By Order dated February 13, 2012 [Doc. 136], the Court denied the City's motion for summary judgment.
- d. By Order dated February 28, 2012 [Doc. 137], the Court granted in part and denied in part Fair Housing's motion for partial summary judgment.
- e. The City of Bozeman denies any and all of the claims remaining for trial, and Montana Fair Housing and the City of Bozeman agree that this Consent Decree is not, and shall not be construed to be, an admission of liability by any party on any of those claims.
- f. Consistent with settlement discussions conducted after February 28, 2012, between the City of Bozeman and Montana Fair Housing,

- i. The City of Bozeman adopted a revised Fair Housing Policy in City Commission Resolution No. 4397 on August 27, 2012, attached and incorporated herein as Exhibit A, which Montana Fair Housing understands and believes is compliant with the Fair Housing Act, 42 USC § 3601, et seq., the Americans with Disabilities Act, 42 USC § 12101, et seq., § 504 of the Rehabilitation Act, 29 USC § 794, the Montana Human Rights Act, the Montana Code of Governmental Fair Practices, and the United States and Montana Constitutions;
- ii. The City of Bozeman adopted Ordinance No. 1838, attached and incorporated herein as Exhibit B, on September 10, 2012, with an effective date of October 10, 2012, which Fair Housing understands and believes is compliant with the Fair Housing Act, 42 USC § 3601, et seq., the Americans with Disabilities Act, 42 USC § 12101, et seq., § 504 of the Rehabilitation Act, 29 USC § 794, the Montana Human Rights Act, the Montana Code of Governmental Fair Practices, and the United States and Montana Constitutions

if implemented consistent with the City's Fair Housing Policy as set forth in Exhibit A; and,

- iii. In August 2012, the City of Bozeman revised certain Building Department forms and procedures, including its Building Permit Applications, Building Permit, Certificate of Occupancy and Building Inspection Checklist, in a manner which Fair Housing understands and believes is compliant with the Fair Housing Act, 42 USC § 3601, et seq., the Americans with Disabilities Act, 42 USC § 12101, et seq., § 504 of the Rehabilitation Act, 29 USC § 794, the Montana Human Rights Act, the Montana Code of Governmental Fair Practices, and the United States and Montana Constitutions if implemented consistent with the City's Fair Housing Policy as set forth in Exhibit A.
- g. Montana Fair Housing and the City of Bozeman agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§1331 and 1345, and 42 U.S.C. §§3613, as well as supplemental jurisdiction over state claims made by Fair Housing against the City Defendants.

- h. Fair Housing and the City further agree that this controversy and any and all claims made by Fair Housing against the City of Bozeman should be fully and finally resolved without further proceedings or a trial.

It is hereby ADJUDGED, ORDERED and DECREED that:

3. JURISDICTION: The Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§1331 and 1345, and 42 U.S.C. §§3613, as well as supplemental jurisdiction of the Court over state claims made by Fair Housing against the City Defendants.
4. FAIR HOUSING POLICY: The City of Bozeman, acting through its officers, employees or authorized agents, will abide by the provisions of its Resolution No. 4397, attached hereto as Exhibit A, affirming the City of Bozeman Policy on Fair Housing Practices.
5. USE OF BUILDING DEPARTMENT FORMS: The City of Bozeman will use, in the ordinary course of the exercise of its licensing and regulatory powers, the Building Permit Applications, Building Permit, Certificate of Occupancy and Building Inspection Checklist forms, in the same or a substantially equivalent form as revised in August 2012.
6. ORDINANCE 1838 FORMS: Within 90 days of the issuance of this

Consent Decree, the City will provide to Fair Housing copies of the forms intended to be used by the City Planning Director for purposes of implementing the reasonable accommodation provisions of Ordinance No. 1838, attached hereto as Exhibit B.

7. **PAYMENT:** The City of Bozeman agrees to pay to Montana Fair Housing the sum of \$150,000.00. This payment will be tendered to Fair Housing by Bozeman as payment for all damages, attorney's fees, and costs claimed by MFH in Cause No. CV-09-90-BU, now pending in the United States District Court for the District of Montana, Butte Division. The check shall be made payable to "Montana Fair Housing, Inc.," and delivered within 10 business days after the issuance of this Consent Decree to the offices of Montana Fair Housing, 519 East Front Street, Butte, Montana 59701.
8. **NOTIFICATION OF FUTURE VIOLATIONS:** In the event Montana Fair Housing becomes aware of information indicating any violation in the City of Bozeman of the Fair Housing Act, Americans with Disabilities Act, § 504 of the Rehabilitation Act, the Human Rights Act, or the Governmental Code of Fair Practices, prior to the issuance of a certificate of occupancy, Fair Housing shall promptly notify the

Bozeman City Attorney of the information indicating such a violation.

The notice shall be in writing and shall specify the address of the possible violation, the nature of the possible violation, and the legal basis for the possible violation.

9. **DISMISSAL OF CROSS-CLAIM:** Consistent with the Consent Order issued on March 1, 2011 [Doc. 69], the Order directing entry of Judgment against the Defendants Hinesley Family Limited Partnership #1, Charles Hinesley Sr., and Hinesley Development [Doc. 81], the Judgment entered in the above entitled case against the Hinesley Defendants [Doc. 82], and applicable law, Montana Fair Housing will join with the City of Bozeman in filing a Motion to Dismiss With Prejudice the Cross Claim filed by the Hinesley Defendants against the City Defendants.
10. **FULL AND FINAL RELEASE**
 - a. In consideration of the City of Bozeman's promises and covenants as set forth in this Consent Decree, Montana Fair Housing fully and forever releases and discharges Bozeman, its agents, employees, and attorneys from any and all actions, claims, causes of action, demands for damages, including attorney's fees and

costs, whether asserted or unasserted, known or unknown, foreseen or unforeseen, and arising out of or in any way connected to Bozeman's enforcement of the International Building Code, the Unified Development Ordinance, or the adoption of the Unified Development Ordinance prior to the date of this Settlement Agreement. This release is intended to be a full and final release of all claims that Fair Housing asserted or could have asserted against Bozeman in Cause No. CV-09-90-BU, now pending in the in the U. S. District Court, District of Montana, Butte Division.

- b. In consideration of MFH's promises and covenants as set forth in this Consent Decree, the City of Bozeman fully and forever releases and discharges MFH and its agents, employees, and attorneys from any and all actions, claims, causes of action, demands for damages, including any claims for attorney's fees and costs, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of or in any way connected with Fair Housing's filing and prosecution of Cause No. CV-09-090-BU, now pending in the U. S. District Court, District of Montana, Butte Division. This release is intended to be a full and

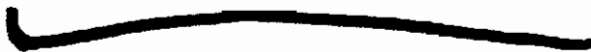
final release of all claims that Bozeman asserted or could have asserted against MFH in Cause No. CV-09-090-BU, now pending in the U. S. District Court, District of Montana, Butte Division.

11. The Court shall retain jurisdiction over the above entitled matter until such time as the Cross Claim by the Hinesley Defendants against the City of Bozeman is dismissed with prejudice or otherwise fully and finally resolved.
12. Any and all pending claims by Plaintiff Montana Fair Housing against Defendants City of Bozeman, Andy Epple and/or Vicki Hasler in the above entitled case are hereby dismissed with prejudice consistent with the provisions of this Consent Decree, with each of said parties to bear their own costs, including attorney fees.

The undersigned parties consent to the entry of this Consent Decree as indicated below by the signatures of their counsel of record.

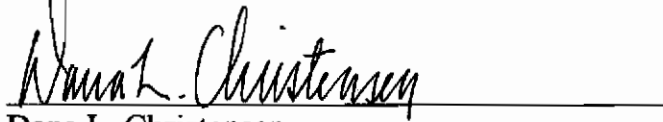


Timothy C. Kelly, e-signature: /s/ Timothy C. Kelly
Kelly Law Office, Attorney for Plaintiff, Montana Fair Housing, Inc.



Michael J. Lilly, e-signature: /s/Michael J. Lilly
Berg, Lilly & Tollefsen, P.C., Attorneys for Defendants City of Bozeman,
Andrew Epple and Vicki Hasler

SO ORDERED this 9th day of October, 2012.



Dana L. Christensen
United States District Court Judge
District of Montana