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SB 344

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Senator Terry Murphy
Montana Senate Judiciary Committee

Re: SB 344 – Enacting the Montana Property Fairness Act

Dear Senator Murphy:

I have just this week been advised of your hearing in committee to consider SB 344 – Enacting the Montana Property Fairness Act. Although I can't be in Helena to testify, I appreciate the opportunity to provide my written testimony in support of SB 344.

My husband originally bought a piece of riverfront property on the Madison River almost thirty years ago, and we have held on to it since then. Even back then, the price for property along the river was substantially higher than non-riverfront, or even river-view, property. The parcels along the river, for the most part, are 10 or 20 acres in size. At one time, we thought we would build our retirement home on the river, but we have since settled near Henrys Lake, Idaho, which has been my husband's favorite fishery since 1961, when he first discovered the area. However, we have held our Madison River property as an investment, and also as our ace in the hole in the event we tired of life in Idaho and decided to move to the Montana side. After all, the two properties are 30 minutes apart!

Three years ago, a citizen's group (funded by environmental interests) requested that the Madison County Commissioners institute a 500-foot setback along the Madison River (almost two football fields in length!), because the river was in danger from potential development. For two years, the proposed ordinance was crafted by a Streamside Protection Steering Committee composed of a cross-section of citizens appointed by the Planning Board. Once the Committee's work was done, the Planning Board immediately slashed its final recommendation (which consisted of a 75-foot setback, with a possible secondary setback where warranted), in favor of re-instituting a 500-foot setback. At every turn, this Planning Board has shown bias, and completely disregarded an in-depth reading of the "science" which they themselves are using to buttress their arguments, as well as testimony by experts hired by landowner groups. As it now stands, the proposed legislation has been whittled down to a 300-foot setback (one football field in length!), with a cumbersome variance process possible in certain instances.

For the entire three-year period, there has been no certainty of knowing how quickly the ordinance would be enacted. Today, a public hearing was set by the County Commissioners for June 16th. I do not know when an exact date of enactment would be if everything went according to the Planning Board's plan. However, because of this entire process, we became disgusted with the attempt to curtail what we, as responsible landowners, might do with our property in the future, and in 2010 we put our property on the market. In 2009, two lots of approximately the same size (one 4 lots to the north, and one 4 lots to the south of ours) sold for \$675,000 and \$650,000, respectively. These lots were bought by individuals who were ready to build immediately, in a blazing rush to beat the clock on any pending legislation. The lot to the south had been on the market for around \$900,000 or \$1 million, but that seller, after rejecting several offers larger than the final selling price, settled for less because time was running against the pending legislation. In any event, I would expect that these two sales would set a basis for our lot value prior to enactment of legislation. However, because such an ordinance would deprive us or any subsequent buyers of river views, we were advised by our realtor, Chris Murphy of Montana Territorial Land Co., located in Ennis, that any prospective

buyers of riverfront property had to be advised of the pending legislation, and that alone would chill any activity. If the ordinance was enacted, we were told to expect a drop in value of around 75%. Other individuals in the valley have been advised similarly by their realtors, among them Kelly Galloup of the Slide Inn, who was told that his property would drop 85% in value, I believe. In any event, we have had no activity whatsoever on this piece of property.

This lack of activity, in addition to the skewing of "science" in support of such actions by elected officials, makes this a very grave matter. There are times when such actions are needed—but this is the wrong legislation for the wrong reasons. I have conducted property searches along the Madison River to see just how many properties are affected. My in-depth investigation reveals that there are approximately eighty undeveloped residential parcels along a 60-mile stretch of river. There have been analyses conducted by governmental agencies as to the sources of any impairment of the Madison River, and those top sources are agriculture, ranching (cattle grazing) and Yellowstone Park—one natural, and two not. However, these irritants are not addressed in this proposed legislation. The President of the Madison County Planning Board was quoted in a newspaper interview about not wanting to see what people are barbecuing on their decks, and that this legislation wasn't about calf barns along the river, but rather trophy homes. Well, we believe that trophy homes actually add to the local economy (construction, real estate activity, local service economies). In addition, the makeup of parcels along the Madison River and feeder streams is such that overcrowding, river impairment and impact on fish and wildlife are non-existent.

I understand that CAPS is another tool used by land planning agencies to mitigate developmental impacts on the environment. Dr. Pete Feigley of Livingston, Montana conducted a sample survey of sections of land identified in CAPS as having certain plant and animal life, the results of which he submitted to the Madison County Planning Board on October 25, 2010. He identified numerous errors in the data contained in CAPS, and CAPS uses an expectation model which says that if "X" plant is correlated to an area, then "Y" animal exists there, as well. Well, he determined in his research that "X" plant wasn't in existence, and therefore "Y" animal wasn't, either. GIGO...the system is only as good as the inputs, which were faulty, in these instances. But the Planning Board ignored his report, and limited his comments to about five minutes.

Senator Murphy and respected committee members, there are grave consequences for the actions taken by our elected officials. My request is that you enact legislation that makes our officials think twice before taking ill-advised steps that impact landowners. Current "takings" definitions state that while some use still remains (regardless of financial impact) there is no "taking." While this is not taking money out of our bank account, it is greatly diminishing what we relied upon for the future, so it may as well be taking money out of our account. My hope is that SB 344 would be enacted immediately upon passage, rather than waiting until July 1, 2011. If not, it may be too late for property owners along the Madison River.

Thank you for your consideration.

Sincerely,

Lorraine Snipper