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SENATE JUDICIARY
COMMITTEE NO. 8
DATE 2/18/11
SB 344

February 17, 2011

Senator Terry Murphy
Montana Senate Judiciary Committee

RE: SB 344 -Enacting the Montana Property Fairness Act

Dear Senator Murphy:

I am the owner of an unimproved 11 acre parcel in a small development called Uline Bench on the banks of the Upper Madison River, as well as the owner of my current home at 18 Sturdy Lane, Cameron, Montana, a home also near the banks of the Madison River ("River"). I purchased the Uline Bench property in 1999 and the Sturdy Lane home a few years later, paying a premium price for each for the views of the River. The Uline Bench property was subdivided in 1978 and is not currently subject to any restriction as to the location of my home other than a 50 foot setback imposed by the Uline Bench CC&Rs. The Sturdy Lane property was subdivided in the 1970s as well. In purchasing these properties I was pursuing my life long dream of having property on the River upon which I would build the home I would die in. I am now in the process of transitioning to residence in Montana having retired December 31, 2010.

I am afraid that not only will my dreams be dashed by irresponsible and unnecessary actions by the County of Madison, but that the value of these properties will be taken from me to my detriment and that of my wife and children. There is pending before the Board of Madison County Commissioners ("Commissioners") a proposal from its Planning Board ("PB") that would impose a building setback and a non-disturbance zone of 300 feet from the high water river mark on the River. This zoning will create another layer of bureaucracy at the expense of its taxpayers in the County that will have substantial power in administering variance procedures to tell you where and how your home can be built and dictate even the materials and the method of construction. Sound familiar? I do not have a suitable building site at Uline Bench beyond the 300 feet setback from the River. My neighbors have available building sites 300 feet back from the River but these sites have no view of the River, nor can they qualify for a variance.

The PB has alleged falsely that the zoning is necessary to protect the River and wildlife. It has certified to the County Commissioners that landowners affected by the ordinance will not suffer a loss in value in their property, notwithstanding it must be without dispute by any person of reasonable intelligence and integrity that a property with a home with a view of the

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River, all things considered, is worth substantially more than a home without a view of the River. At one PB meeting I was told that although the members were aware that there was no evidence that current standards in construction, if properly applied, could contaminate the River, the members went on to speculate wildly that some contamination might be discovered in home building materials 100 years from now and it was better to be, in so many words, safe rather than sorry. I have spent over thirty years as a trial lawyer and I have been called upon to evaluate evidence in support of legal and equitable claims on a daily basis and have frequently been involved as an advocate in the application of the evidence weighing process before various tribunals. In my considered opinion the PB failed in its duties as a fact finder and ignored relevant and probative evidence in favor of generalities and half truths to rationalize their pre-conceived notions of "conservation". The zoning setback is not about the preservation of the River as a fishery or wildlife resource, but it is about imposing the aesthetic views of commercial outfitters and special interest groups seeking to roll back the clock 100 years to obtain a pristine wilderness; all at the considerable expense of riverside landowners.

I believe the PB's callous and arrogant attitude towards the plight of the riverside landowners, in large part, is based on their belief that Madison County will not be held legally responsible for substantially diminishing the value of the property of the riverside landowners. At the moment the PB is being advised by government counsel that it can act with impunity and without accountability for the harm that will be occasioned to riverside landowners by the proposed setback zoning. I have been told more than once by members of the PB or Planning Department or their agents that Madison County will not be responsible for any reduction in the value of my or my neighbors' property because under Montana and Federal law the zoning setbacks is not a "taking" since I will retain the use of my property in some manner or form. More than one riverside landowner has been called selfish for asserting his or her property rights in opposition to the extreme setback proposals that have been floating around Madison County for the last three years. Rather, riverside landowners have been told they should sacrifice their personal and financial interests for the good of the community, including providing pristine view sheds to fly fisherman and the commercial users of the River. When one landowner asked the members of the PB what each of them was sacrificing for the River the PB members could say nothing.

My story, I think, aptly points out the need for the enactment of Senate Bills 344 and 347. Absent such laws, small landowners of this great State of Montana will continue to be the victims of overly aggressive, irresponsible or misguided county officials who have taken up the torch of the out of state special interest groups attempting to "wildernize" Montana. Absent such laws, governmental entities will continue to expand the scope of the health, safety and welfare pre-requisite for government intrusion into the property rights of its citizens, regardless of the truth of the facts used in support thereof and regardless of the grief and financial loss that will be suffered by the landowners that have supported the State through their taxes for many years. The law in my view will be a meaningful and effective deterrent to reckless and abusive zoning such as that now proposed in Madison County.

Respectfully:


John J. Bingham Jr.

cc: Board of Madison County Commissioners