

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MICHAEL ALBERTUS,)	DOCKET NO.: PT-1999-17
)	
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE OF)	FACTUAL BACKGROUND,
THE STATE OF MONTANA)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on April 26, 2000, in the City of Kalispell, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Michael Albertus, appearing on his behalf, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraiser Carolyn Carman, and the Department of Natural Resources (DNRC), represented by Land Use Specialist Marvin W. Miller, presented testimony in opposition to the appeal.

Testimony was presented and exhibits were received. The Board then took the appeal under advisement. The Board

having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is described as follows:

Lot 17, Echo Lake Summer Home Lots, Section 5, Township 27 North, Range 19 West, comprised of approximately 1.2 acres, County of Flathead, State of Montana. (State Lease Number 3053258).

3. The DOR appraised the subject leased lot at \$74,471 for the 1999 tax year.

4. For the 1999 tax year, the taxpayer appealed to the Flathead County Tax Appeal Board on December 28, 1999 requesting a reduction in the land value to \$58,000-\$61,000, citing the following reason for appeal:

I am dissatisfied with the appraisal, assessment and classification of my property described as:

Because:

- (1) a ten foot public road cuts my lot in half.*
- (2) the ten foot public road easement is a one-way road, it is not maintained, and access to my lot is restricted in winter.*
- (3) because of the fact that the ten-foot roadway easement is not maintained in the*

- winter, fire and emergency is very restricted in the winter; my property has a higher insurance premium because of this.
- (4) there are no other properties in this area that compare with my property because of the fact that no other properties have an easement that is not maintained or restricted in the winter; all of the other lots have year round road service providing school bus, emergency equipment availability, etc.
 - (5) my property is on Echo Lake, which is a lake whose level is not controlled. Years ago, the level was so high that lot 17 was not serviceable. Other permanent houses on private property had to be protected by a sand bag wall.
 - (6) because it is state land, is open to public access and use. State park being near by results in public and so the resulting litter, trash and night time noise. It is also a favorite spot for keggar's (sic). This requires clean up by private parties, of which I am included. The public is responsible for this trash yet they pay nothing and take no responsibility for cleaning it up. Legal or illegal wood cutting has taken place on my land, because of the lack of law enforcement on my land in the winter, my property has been broken into seven times in thirteen years.

Therefore, for the reasons listed above I feel that my land was improperly appraised, assessed and classified, and wish to appeal the same.

5. The appeal was forwarded to STAB by the Flathead CTAB, §15-2-302 and §77-1-208, MCA.

TAXPAYER'S CONTENTIONS

The taxpayer owns a cabin on Lot 17 on Echo Lake.

Lot 17 has been leased from the State of Montana by Mr. Albertus' family for approximately 32 years.

Mr. Albertus provided little testimony beyond what was stated in the reasons for appeal listed above. He did express a concern over the public being able to cut wood on his leased property.

DEPARTMENT OF REVENUE CONTENTIONS

DOR's Exhibit A is a copy of §77-1-208, MCA, cabin site licensees and leases - method of establishing value, and §15-7-111, MCA, periodic revaluation of certain taxable property. Exhibit B is a copy of the Department's procedures pertaining to cabin site leases.

Exhibit C is the state map of Echo Lake and the property record card showing the width and depth used for the valuation. This lot has 165 feet of lake frontage. It is priced as if it had 250 feet of depth. The area beyond the 250 feet is unusable and has been ignored in pricing. As the result of an AB-26 review, an adjustment was made for the steepness and limited parking access.

Exhibit D is a spreadsheet showing the pricing with the adjustment made for steepness. The original value was \$95,475. An adjustment of 22% was applied to that value. The value after adjustment is \$74,471.

Exhibit E is a map of the Echo Lake area. Exhibit F is a comparable property. This property does not have the depth of the subject property but does have a steepness factor similar to the subject.

Exhibit G consists of listings of property in the Echo Lake area and what the asking prices are. These lots are all fee simple lots. Exhibit H consists of photos of the subject property.

Exhibit I consists of the CALP (Computer Assisted Land Pricing) table for neighborhood 891.FF, Echo Lake, Abbott Lake, and Peterson Lake lots. Fourteen sales were included in the table, with only nine being used in land sales analysis. The average price per front foot was \$684 based on a standard lot size of 100 feet by 250 feet. Ms. Carman testified that, even though the subject property is larger than the average lot, the area beyond the 250 feet has been ignored due to the steepness and limited parking access of the back portion of the lot.

Marvin Miller of the DNRC addressed the issue of firewood cutting by stating that the leaseholders do have the right to control public use of their leased lots. DNRC does not issue permits to cut wood on leased land.

BOARD DISCUSSION

The taxpayer stated that Canadians were buying lease

properties in a sort of "time share" arrangement with several families going together. He did not present any sales information. He believes that the State should not appraise the lease lots in the same manner as private lots.

In attempting to address this issue, the Board studied the history of the legislation that regulates fees for state cabin site leases, as enacted in 1983 and amended in 1989 and 1993. §77-1-208, MCA states that "The board (of land commissioners) shall set the annual fee based on **full market value** (*emphasis added*) for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain **full market value** (*emphasis added*) based on appraisal of the cabin site value as determined by the department of revenue..." The original legislation, which was enacted by the 1983 legislature as House Bill 391 (Chapter 459), reads, in pertinent part:

AN ACT TO REQUIRE THAT IF THE BOARD OF LAND COMMISSIONERS ADOPTS RULES TO ESTABLISH THE MARKET VALUE OF CABIN SITE LICENSES AND LEASES, IT ADOPT A METHOD OF VALUATION OF CURRENT CABIN SITE LICENSES AND LEASES BASED UPON AN APPRAISED LICENSE OR LEASE VALUE AND A METHOD OF VALUATION OF INITIAL CABIN SITE LICENSES OR LEASES BASED UPON A SYSTEM OF COMPETITIVE BIDDING; AND PROVIDING FOR THE VALUATION, DISPOSAL, OR PURCHASE OF FIXTURES AND IMPROVEMENTS.

WHEREAS, on February 13, 1981, the Board of Land Commissioners proposed to adopt rules concerning surface licenses and leases for the use of state forest lands for recreational cabin sites by private individuals, which rules would have established the market value of recreational cabin site licenses and leases by a system of competitive bidding; and

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. **Method of establishing market value for licenses and leases.** (1) If the board adopts, under any existing authority it may have on October 1, 1983, a method of establishing the market value of cabin site licenses or leases differing from the method used by the board on that date, the board shall under that authority establish a method for setting the market value of:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any time wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property** (*emphasis added*), which value may be increased or decreased every fifth year by 5% of the change in the appraised value..."

RENTAL RETURNS ON CABIN SITES ON STATE LANDS

The Forestry Division - Department of State Lands is charged with the responsibility of administering the cabin sites...

According to the Forestry Division, 633 cabin sites have been identified on state lands. Almost all of these sites are in areas west of the Continental Divide... All of the identified state land cabin sites were under lease under the old law.

The 1983 Legislature passed HB 391 which instructed the Board of Land Commissioners to change the method of valuing cabin site licenses and leases after October 1, 1983, to:

(a) each cabin site license or lease in effect on October

1, 1983, for each licensee or lessee who at any times wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property...** (*Emphasis added*)

The problem surfaced when the department began to implement the 1983 law in 1987 and began issuing notices that the rental fees would be **5% of the appraised value of the land, interpreting lease value to be market value.** (*Emphasis added*) That judgment shot the leases which had been \$150 a year up to \$2,300 a year, in some cases. A storm of protests from the lessees got the department to reconsider and **the Board determined that the "lease value" would be 70% of the appraised market value, then applied the 5%.** (*Emphasis added*) The method still drove the leases sky high and brought into play the appraisal values which the lessees protested. The department appraisers then re-visited the sites and began making adjustments, some of the reappraisals dropped as much as \$10,000. There seems to have been no standard judgment. As an example a lease, which about five years ago was \$50, went up to \$150 and then went up to \$2,300, then dropped \$910 a year. This explains why people are upset.

Senate Bill 226 would be a simple and uniform procedure: The County appraiser, who already goes on the property to appraise the improvements, would appraise the land, just as he does the neighbor. **Since the lessee does not have the rights of the fee-simple landowner, and since the state reserves a "public corridor" on the beach, the lessee does not have a private beach and adjustments in value would be made accordingly.** (*Emphasis added*)

Then if the rental fee would be 1.5% of the appraised value, the lessee would be paying about the same as his neighbor pays in taxes to support the government. However, in this case of state lands, it would go to the state elementary and secondary school funds.

If the lessee didn't like the appraisal value, he would have the same appeal structure as any other landowner and the system would be uniform."

Senator Himsl testified that "the 1.5% figure is arbitrary but the state will find that the total tax runs between 1.4 and 1.8 of the market value." During the committee's executive action on the bill, 1.5% was amended to 2%. As amended, the bill was transmitted to the House and was heard by the House Taxation Committee on March 31, 1989. During the hearing an amendment was proposed to return the fee

to the original 5%, but the amendment failed. The committee passed the bill with the 2% rate to the House floor for action, where it was amended to 3.5% and passed. The joint House/Senate conference committee considering the bill's amendments allowed the 3.5% to remain, and the final bill was passed with that percentage. The joint conference committee also added a provision to the bill for a minimum fee, so the final language of the relevant section reads as follows: §77-1-208, MCA, 1 (a)...The fee must be **3.5%** of the appraisal of the cabin site value as determined by the department of revenue **or \$150, whichever is greater...**" (*Emphasis added*)

Senate Bill 424 (Chapter 586), passed by the 1993 legislature, amended §77-1-208 to eliminate the 3.5% annual fee, substituting the language that is presently in statute: "(1) The board shall set the annual fee **based on full market value** for each cabin site... The fee must **attain full market value** based on appraisal of the cabin site value as determined by the department of revenue." (*Emphasis added*) An attempt was made in the Senate Taxation Committee to restore the language to 3.5%, but the amendment was defeated. The statute has not been further amended since 1993.

The applicable Administrative Rules of Montana state: **36.25.110 MINIMUM RENTAL RATES** (6)(a) Effective March

1, 1996, and except as provided in (b), the minimum rental rate for a cabinsite lease or license is **the greater of 3.5% of the appraised market value of the land**, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, **or \$250**. (*emphasis added*) (b) For cabinsite leases or licenses issued prior to July 1, 1993, the minimum rental rate in (a) is effective on the later of the following dates: (i) the first date after July 1, 1993, that the lease is subjected to readjustment pursuant to the terms of the lease, or the first date after July 1, 1993, of lease renewal, whichever date is earlier; or (ii) March 1, 1996. (c) Until the minimum rate in (a) becomes applicable, the minimum rate is the greater of 3.5% of the appraised market value of the land, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, or \$150.

The DOR's statutory mission, pursuant to §15-8-111, MCA and §77-1-208, MCA, is to arrive at market value, or what a property would sell for on the open market. The comparable properties presented by the DOR indicated a base price of \$684 per front foot for a 100 foot by 250 foot lot. The larger subject lot was treated as if it had only 250 feet and an adjustment was made for the steepness of the lot. The Board is satisfied that the DOR has arrived at a valid indicator of market value for the subject lot.

The taxpayer has a valid concern about worrying about future increases in lease fees but this Board has no jurisdiction in the establishment of lease rates. The Montrust Supreme Court decision (***Montanans for the Responsible Use of the School Trust v. State of Montana, ex rel. Board of Land Commissioners and Department of Natural Resources and Conservation, 1999 Mont. 263; 989 P.2d 800***), was filed by a citizens' action group, *Montanans for the Responsible Use of the School Trust*, against the Montana Board of Land Commissioners and the Department of Natural Resources and Conservation, challenging fourteen school trust lands statutes, including §77-1-208, MCA, relating to cabin site leases. The decision, in pertinent part, states: "¶26 The District Court (of the First Judicial District) ruled that §77-1-208, MCA did not violate the trust because it requires that full market value be obtained. However, the District Court found that the Department had a policy of charging a rental rate of 3.5% of appraised value (hereafter, the rental policy) and that Montrust had introduced an economic analysis of cabin site rentals showing that the rental policy's 3.5% rate was 'significantly below a fair market rental rate.' The District Court concluded that the rental policy violated the trust's constitutional requirement that full market value be

obtained for school trust lands... ¶31...we conclude that the rental policy violates the trust... In the present case, the trust mandates that the State obtain full market value for cabin site rentals. Furthermore, the State does not dispute the District Court's determination that the rental policy results in below market rate rentals. We hold that the rental policy violates the trust's requirement that full market value be obtained for school trust lands and interests therein."

Future large increases in lease fees as a result of the Montrust suit may have results that are unfavorable to present leaseholders, including fewer potential buyers for their properties, and declining values of their improvements. Two previous Board decisions relevant to these concerns are *DOR v. Louis Crohn, PT-1997-158*, and *DOR v. Burdette Barnes, Jr., PT-1997-159*. In both instances, the Board stated that "the improvements that are located on this lot are not a part of the appeal before the Board. It is arguable that the **value of the improvements has been impacted by the increasing lease fee to a point where they are not attractive on the market.** The testimony of other lessees in other appeals that have in fact been attempting to sell the improvements and have not received a great amount of interest from potential purchasers, might be indicative of the fact that **potential buyers are**

aware of the amount of the annual fee and believe they must be compensated by a lower purchase price for the improvements."

(Emphasis added) However, in this appeal as in previous appeals, only the value of the land has been contested.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-302 MCA and §77-1-208, MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **§77-1-208, MCA. Cabin site licenses and leases-method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue...The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, Chapter 2.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

5. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1), MCA**, in assigning a market value to the subject property for lease fee purposes.

6. The appeal of the taxpayer is hereby denied and the decision of the Department of Revenue is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Lake County by the Assessor of that county at the 1999 tax year value of \$74,471, as determined by the Department of Revenue.

Dated this 18th day of May, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of May, 2000, the foregoing Amended Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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