

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BARBARA KAYE ANDERSON	)	
	)	
Appellant,	)	DOCKET NO.: PT-2000-16
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on August 15, 2001 in the City of Missoula, 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.

The Appellant, represented by her husband, Kent Anderson, provided testimony in support of the appeal. James Fairbanks, Region 4 Lead, represented the Respondent, Department of Revenue (DOR) and provided testimony in opposition to the appeal. Testimony was presented and exhibits were received.

Mrs. Anderson is the appellant in this proceeding and, therefore, has the burden of proof. Based on the evidence and testimony, the Board affirms the market value of the land established by DOR under jurisdiction of the Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM). The DOR has demonstrated to this Board that its appraisal of the subject state-

leased land was accomplished pursuant to §77-1-208, MCA.

**STATEMENT OF THE ISSUE**

The issue before this Board in this appeal is the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA. The market value of improvements are not in contention in this appeal.

**FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, 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 land leased from the State of Montana and described as follows:  

Lot 27, Elbow Lake, 0.86 acres in Section 20, Township 15 North, Range 14 West, County of Missoula, State of Montana. (Lease number 3062649).
3. For the 2000 tax year, the DOR appraised the subject leased lot at a value of \$23,910.
4. Mrs. Anderson filed a timely appeal with the Board on February 5, 2001, requesting a market value of \$20,640, stating:  

*Charged for land I do not have at one rate and adjusted for the land I do not have at a different rate.*
5. The Board has jurisdiction in this matter, pursuant to §77-1-208, MCA.

**TAXPAYER'S CONTENTIONS**

Mr. Anderson testified that the Department of Natural

Resources and Conservation (DNRC) resurveyed the state leased lots on Elbow Lake "because of tax appeals", which resulted in an increase in the size of the subject lot ("we used to have a 100 foot setback and then they run the pins down to the shoreline, they made the lot bigger." Mr. Anderson also noted that some of the lots on Elbow Lake are valued on a water front foot basis and some on an acreage basis.

Mr. Anderson testified that he obtained a copy of George Lloyd's county tax appeal board decision, dated January 23, 1998, (Taxpayer's Exhibit 1) in which that board approved Mr. Lloyd's requested value of \$24,015 for the reason that:

The valuation increase of 91.2 percent from \$14,146 to \$27,060 was not adequately explained. Another lot with similar elevation and slope was adjusted by the DOR. The requested value of \$24,015 is hereby approved for the land.

Mr. Anderson also presented a copy of a letter dated August 12, 2001 by George Lloyd (Taxpayer's Exhibit 1) in which he stated:

I, George Lloyd went before the Missoula County Tax Appeal Board because I was charged for \$300.00 a foot for 100 feet of frontage and subtracted \$155.00 a foot for 21 feet of frontage I did not have at Lot 17, plus \$315.00 for the excess land, which came to \$27,060.00. My appeal was for 79 feet times 300 feet plus \$315.000 for the total of \$24,105.00. The Board agreed that I can't be charged at \$300.00 a foot for land I don't have and subtracted at \$155.00 a foot.

This is what my appeal was about. I don't know why the Board wrote on my Tax Appeal form that they adjusted it by the slope and elevation of another property the D.O.R. adjusted.

In summary, Mr. Anderson is basing his requested value on

the following calculations and is seeking similar treatment to that he believes was received by George Lloyd before the Missoula County Tax Appeal Board.

$$\begin{array}{r} \text{Lot 27, .86 acres} \\ \text{Discounted riverfront acreage} \\ \$30,000.00 \times .86 \text{ acres} \end{array} \qquad \begin{array}{r} = \$25,800.00 \\ \times \qquad \qquad 80\% \\ \hline \$20,640.00 \end{array}$$

Mr. Anderson is seeking a valuation based upon the subject .86 acres being valued at \$25,800 with a further 20 percent reduction applied for the DOR recognition of the lack of lake access afforded to the lot due to its location east of the weir.<sup>1</sup>

#### DOR CONTENTIONS

DOR Exhibit A is a document entitled "An appraisal report for the Department of Natural Resources and Conservation, State of Montana, Cabin Site Leases in Missoula" prepared by James Fairbanks, Region 4 Lead for the Department of Revenue. This document outlines the history of the DOR's involvement in the valuation of state leased land. The appraisal must obtain full market value pursuant to Section 77-1-208, MCA. The DNRC (Department of Natural Resources and Conservation) lease fee is 3.5 percent of the DOR appraised value.

Specific to its appraisal of Elbow Lake state lease lots, DOR Exhibit A states:

Located in Section 20, T15N, R14W just north of  
the Clearwater Junction of Highways' 200 and 83,

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<sup>1</sup> Mr. Anderson testified that a weir is a rock dam or dike built across the river for the purpose of keeping the water level higher in front of certain lots affected by its presence.

Elbow Lake parcels rest on the shoreline of a widening of the Clearwater River providing spectacular views, water sports and limited motor boat activities.

Water access and building site proximity to water varies, with values adjusted according to previous County Tax Appeal Board (CTAB) rulings.

Among arguments offered by lessees have been the uncertain boundaries of the individual Elbow Lake lots. As valuations are influenced by these lease delineations, DNRC staff this year set "pins" establishing *historic use areas* with the help of lessees. A subsequent survey was accomplished to fix actual frontage and depth figures used in valuing the leases.

Twenty sales of vacant lake front lots averaging \$122,655 establish a front foot (FF) value for the first 100 feet @ \$1,050 per FF (primary), with additional frontage @ \$300 per FF (residual) as of January 1996. Nineteen sales of river fronting (time adjusted to January 1996) averaging \$30,965 indicate a value of \$155 per FF. While Elbow Lake cannot compare to the amenities and potential uses available at Placid, Seeley, Salmon, and even Alva and Lindberg Lakes, the lots offer increased recreational potentials when compared to residential lots alongside streams and rivers.

In compromise of the FF value indications, the residual lake front value of \$300 is applied to the BASE SIZE (100FF) lot, resulting in a BASE VALUE of \$30,000. Parcels smaller, or larger than the BASE adjusted by *adding to* or *subtracting from* the BASE VALUE by multiplying the difference (between the actual frontage and 100FF) times the indicated river fronting value of \$155.

Certain base lot values are adjusted for topography, site severing access roads, excess frontage, and irregular shape negatives identified during on-site reviews and valuation challenge hearings. Lots lacking good navigable water frontage 8 through 13, and 26 through 29 are valued as *discounted riverfront acreage*. Additionally, lots are adjusted for less than typical 200' depth, by taking the square root of the factor resulting when the actual depth is



by orange highlighting on Taxpayer's Exhibit 1, which would include the subject lot, are not considered to have access to navigable waterways. Therefore, Mr. Fairbanks made the determination to use sales of creek fronting properties, which are not navigable waterways, as value indications. These lots are valued on an acreage, rather than a front foot basis, at \$30,000 for the first acre and \$800 for residual acreage.<sup>2</sup> These values were driven by sales of properties on creeks, not navigable waterways.

In addition, the weir, or stone dike, prohibits the Andersons from taking a boat to get to Elbow Lake. Mr. Fairbanks afforded a 20 percent reduction in recognition of this access issue.

The subject lot is dissected by a road. No allowance has been made for its presence in the DOR appraisal.

With regard to appellants' rationale behind the requested value, Mr. Fairbanks responded, "The reason that I would argue that you wouldn't apply .86 times \$30,000 is that our evidence suggests that a .86 acre piece is gonna be darn close to a one acre piece, which is a darn close to the sale price of a one and a half or two acre piece. There just isn't that much difference."

DOR Exhibit B is a copy of cabin site lease bid on Elbow Lake for Lot 2. The minimum bid was \$1,833.30, which is five percent of the DOR appraisal. Two bids were received. The winning

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<sup>2</sup> Mr. Fairbanks noted that "When you see a residual value that's low, like \$800, what that suggests is that the marketplace doesn't distinguish much between a half acre and a three acre piece. If you've got creek frontage, they were selling for about \$29,500 to \$32,000 irrespective of size."

bid, \$2,755, was awarded on August 8, 2001. As the two bids were both substantially higher than the minimum bid, Mr. Fairbanks concluded that there is demand for state lease lots. Mr. Fairbanks conceded that Lot 2 is a lake lot with superior water access than the subject.

#### BOARD DISCUSSION

Legislation has determined the lease rate and also assigned the DOR with the responsibility of conducting appraisals for DNRC.

**Section 9.** Section 77-1-208, MCA, is amended to read: "**77-1-208. Cabin site licenses and leases - method of establishing value.** (1) The board<sup>3</sup> 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** (emphasis supplied)..."

This Board has 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 "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 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

WHEREAS, the rules would have allowed out-of-state interests and other parties to increase by competitive bidding the cost of current cabin site licenses and leases and would thereby have worked a hardship on or dispossessed current licensees and lessees and were therefore subsequently withdrawn by the Board; and

WHEREAS, the policy of this state for the leasing of state lands as provided in 77-1-202 is that the guiding principle in the leasing of state lands is "that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state"; and

WHEREAS, allowing current cabin site licensees and lessees to continue to enjoy the benefits of existing licenses and leases and the benefits of their labor is a worthy object helpful to the well-being of the people of this state in that it promotes continuity in the case of state lands, promotes use of state lands by the public by granting a minimal expectation of continuing enjoyment, and promotes satisfaction with governmental processes.

THEREFORE, it is the intent of this bill to direct that if the Board of Land Commissioners adopts any rules under whatever existing rulemaking authority it may have to establish the market value of current cabin site licenses or leases, that the Board, in furtherance of the state policy expressed in 77-1-202, adopt a method of establishing the market values of cabin site licenses and leases which would not cause undue disruption to the lives and property of and useful enjoyment by current licensees and lessees.

**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..."

In a previous appeal (*Marilyn A. & Daniel E. Harmon vs. Department of Revenue, PT-1999-19*) testimony was heard that, following the passage of the above legislation, statewide meetings were held with lessees, who expressed their concerns with the 5% fee. This resulted in the reduction to 3.5% (or 70% of the 5%), as implemented by Senate Bill 226 (Chapter 705), passed by the 1989 legislature. As introduced, Senate Bill 226 proposed a reduction of the 5% fee to "1.5% of the appraisal of the cabin site value as determined by the county appraiser." The fiscal note for the bill stated:

"The significant difference between the current process and this proposed law is the percentage used to derive the rental. Current law provides that the rental will be **5% of the lease value (3.5% of appraised value)**. The proposed legislation sets the rental at **1.5% of appraised value.**" (*Emphasis added*).

During the February 1, 1989 hearing on Senate Bill 226 before the Senate Committee on Natural Resources, the following exhibit was presented by the bill's sponsor, Senator Matt Himsl:

#### **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.** (*Emphasis added*)

Senator Himsl testified "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 Board recognizes the concern that potential buyers of leased properties may be deterred by increases in lease fees. 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 DNRC, 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."

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.

To date this Board has not been presented supporting evidence that the potential increase in lease fees have adversely impacted land or improvement values.

Mr. Anderson is of the understanding that George Lloyd received his requested value from the Missoula County Tax Appeal Board because it accepted his premise that his lot should be valued by simply multiplying the acreage (.79) times the DOR base rate

(\$30,000) to arrive at his requested value of \$24,015. It does not appear to this Board that this was the reasoning behind the county board decision. That board appears to have adopted Mr. Lloyd's requested value because it did not find the DOR explanation for an increase in value to be acceptable.

The flaw in the appellant's argument is the assumption that an incremental increase in parcel size equates to a similar incremental increase in market value. Commonly accepted appraisal theory does not support a claim, for example, that a 50 front foot lot is worth half that of a 100 front foot lot. Market evidence would likely indicate that a 50 foot lot is worth dramatically more than half of a 100 front foot lot.

In addition, the Board must rule based upon a preponderance of the evidence with regard to the **present** appeal and not upon that from an appeal which did not even come to this Board.

Montana statutes require that leased property be appraised at full market value (§77-1-208, MCA). Statute precludes the DOR from arriving at any value less than that.

The DOR has satisfactorily demonstrated to this Board that it has done so in accordance with statute and administrative rule and appears to have made a conscientious effort to recognize all value-diminishing aspects of the subject lot.

#### **CONCLUSIONS OF LAW**

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

2. **§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. (Emphasis supplied).
3. 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)).
4. 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.
5. The appeal of the appellant is hereby denied and the decision of the DOR is affirmed.

**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall remain on the tax rolls of Missoula County by the local Department of Revenue office at the 2001 tax year value of \$23,910, as determined by the Department of Revenue and affirmed by this Board.

Dated this 23rd day of August, 2001.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

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JERE ANN 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 23rd day of August, 2001, the foregoing 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:

Kent and Barbara Anderson  
710 Parkview Way  
Missoula, Montana 59803

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Missoula County Appraisal Office  
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DONNA EUBANK  
Paralegal

