

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	DOCKET NO.: PT-1997-159
Appellant,)	
)	
-vs-)	
)	
BURDETTE BARNES, JR.,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 18th day of August, 1998, in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the said hearing was duly given as required by law. The Department of Revenue (DOR), represented by Roberta Cross Guns, tax counsel, Carolyn Carman, appraiser, and Scott Williams, appraiser, presented testimony in support of the appeal. The Department of Natural Resources (DNRC) was represented by Ms. Jeanne Fairbanks who presented testimony in support of the appeal. The respondent, represented by Burdette Barnes, Jr., presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the

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

STATEMENT OF ISSUE

The issue before the 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.

FINDINGS OF FACT

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 respondent is the lessee of the property which is the subject of this appeal and which is described as follows:

Land only described as State Lot 11 Echo
Lake Summer Home Lots, S5 T27N R 19W,
Flathead County, Montana.

3. For the real property appraisal cycle beginning in 1997, the DOR appraised the subject property at a value of \$69,343 for the cabin site land.

4. The lessee appealed to the Flathead County Tax Appeal Board requesting a reduction in value to "53% of the lease valuation" (calculated to be \$36,752 on CTAB transcript pg 13) for the land. The lessee requested value was stated as \$49,700 at the hearing before this Board.

5. The County Board adjusted the value to \$55,400 for the cabin site land.

6. The DOR then appealed that decision to this Board.

DOR CONTENTIONS

The DOR is charged with establishing the value of cabin site lands in 77-1-208, MCA. Ms. Carman testified about the process utilized by the DOR to determine the market value for any given property. The DOR does so in accordance with 15-7-111, MCA, using the appraisal methods and procedures that are employed statewide.

Land in the area of Echo Lake is valued using sales of land from 1992 through 1996 in the Echo Lake area. She stated that valid sales were put into a data bank, the highs and lows were thrown out and the remaining sales were averaged to determine an appropriate value.

State's exhibit C was introduced as the Computer Assisted Land Pricing (CALP) table. Mr. Williams testified concerning the development and use of the CALP "regression model." Actual sales prices are adjusted by trending for time from the date of sale to January 1, 1996. Not all the sales used in the study were vacant and, if improvements were located on the site at the time of sale, the DOR 1996 improvement value from the cost approach was subtracted from the adjusted sale to

establish a value for the land. Exhibit C is used not only on Echo Lake but also on the string of lakes that essentially comprise Echo Lake. It is Mr. Williams' opinion that the statistics used in the CALP model were producing values in an acceptable range. He testified that many of the vacant parcels left on Echo Lake are not the typical lots found there and may be affected by swamp conditions, steep slope or limited frontage access. It was for that reason that he brought in the sales of improved lots to increase the accuracy of the regression analysis. He stated that doing so brought the coefficient of variation down under 20% which is the standard the DOR considers to be within an acceptable range.

The standard lot size was determined to be 100' by 250'. This standard came from the average lot on the lake in the neighborhood, not just from the sales. A standard lot would be valued at \$68,358 using the coefficients in the CALP model. The subject parcel has 127 front feet and is 191 feet in depth.

Mr. Williams agreed that there is a difference in the bundle of rights between an owner of fee land and a lessee of a cabin site owned by the state. Regardless of any difference, he stated that the statute directs the DOR to arrive at a value that is 100% of market value. Exhibit E is a copy of DOR procedure 2002 "Valuation of Department of State Lands Cabin

Site Leases." Exhibit E instructs the DOR appraisers that "The valuation of adjacent land parcels should serve as the basis for valuation of the cabin site acreage."

Ms. Jeanne Fairbanks, representing the DNRC, testified concerning her capacity with the DNRC as manager of the state land lease program. Her experience includes prior employment as a DOR commercial appraiser. She is a generally certified appraiser in the State of Montana.

Ms. Fairbanks stated that Mr. Barnes has been involved with the lessee program since 1972. She stated that, in the early years of the program, the fees charged for a lease were anywhere from \$5 to \$150 per year and were based on values determined by State Land appraisers at 70% of the market value.

The 70% of market was utilized to identify the lease fee, which at that time was 5% of that value calculation. Subsequent legislative changes were made to require a full market value determination, but the lease fee of 5% was reduced to 70% of that, 3.5% of market value, to recognize that the lessee does not have the full bundle of rights that would normally follow fee ownership. The "Enabling Act" and the State Constitution require that the state receive a fee based on the full market value of the land leased. This position was supported by exhibit B, a decision of the Montana First Judicial District, cause number ADV 97-134, Montanans for the

Responsible Use of the School Trust v. State of Montana.

Ms. Fairbanks stated that, in her opinion, there is evidence that there is a leasehold value established because the current lease rates are less than the market rates charged.

When market rate and contract rate are not the same, a leasehold value is established. She pointed out that establishing the value of the land is a function of the DOR, and establishing the lease rate is a legislative function.

Ms. Fairbanks responded to questions concerning lease fees and turnover of leases that whether or not the lot is improved or unimproved has no effect on the lease fee charged. She stated there are typically 20 to 30 lots available for lease annually, and she did not know how many lots on Echo Lake were available for lease this year.

LESSEE CONTENTIONS

Mr. Barnes stated that, in fact, his wife and her mother have been involved with this lease since 1958. He personally became involved in 1972, as stated by Ms. Fairbanks.

He is currently retired, on an income that is essentially fixed and yet the increase in market value directly equates to a lease fee increase for him. He testified concerning the history of the fee increase, from \$150 initially to \$2,427 presently.

Mr. Barnes stated that the limited use of the lots compared to the use of private land creates a distinction in value not recognized in the value determination. He has to pay the lease fee, property taxes (on the improvements), electric cooperative membership, insurance, and upkeep on the improvements. These are all expenses normally found with property ownership.

Mr. Barnes does have the improvements listed with a local realtor and has had for two years. In that time he has had to reduce his asking price as the property has not sold.

He stated that he has not had a single offer at the recently reduced price, and he claimed that some of his neighbors have had the same experience.

Mr. Barnes argued that the state increases the amount of fee because they know that the lessee has invested in improvements that they do not want to lose. Without the improvements, the state would only have a grazing fee to collect. It appears to him that the state has in mind raising the fee to the point where the current lessees have to give them up, and then lower the fee so that a new lessee could be found. He believes that the current system is unfair to the lessees who have invested so much in these lots.

Mr. Barnes presented exhibit 3, a listing of the "CABINSITE RULES AND REGULATIONS" that a lessee must abide by

to maintain the lease. The exhibit contains the rules and regulations that have been used since they were approved by the State Board of Land Commissioners on May 13, 1959.

The value Mr. Barnes requested reflects a determination made by him based on inflation of 3% per year of the fee from ten years ago of \$826. He did not arrive at his requested value by working from the value of the land from 10 years ago but was instead making his calculations from the lease fee.

Mr. Barnes stated that two years ago the Canadian monetary exchange was favorable and many sought the cabin site leases. What happened, however, was that once the lease was established it was used by several different people, including one for use as a church camp. The lot right next to him sold for \$65,000 two years ago (1995-1996). He characterized that lot as the nicest lot on the lake.

DISCUSSION

The fee charged a lessee of a state cabin site lease is a fee for the use of state owned land. The DOR is not establishing market value of the lot for the lessee; they are establishing the market value of the lot for the State of Montana. The lessee referred several times to his "ownership" of the lot, although he recognizes that as a "figure of speech." There is no question that having been the lessee

since 1958, and building and maintaining the improvements found on the lot, tends to make one consider it held as "ownership."

Because of this emotional feeling, the tendency to question the value as diminished because the lessee does not own the lot overshadows the fact that the lots are being appraised and valued to the owner, who then leases the right to use them to another, the successful bidder.

This Board has heard several appeals on the value of cabin site leases and has questioned the concepts of bundle of rights, lease restrictions, and even the size of the tracts as a known or unknown. The concern of the lessee is almost always the same: dealing with the lease fee instead of the market value upon which the fee is based. This case is indicative of this approach, whereby Mr. Barnes calculated what he considered to be an appropriate fee increase based on inflation over a ten year period. He did not present sales of property that would indicate the value determination of the DOR is incorrect. He argued that the lessees sell only the improvements, and there are zero sales of leased lots.

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 lessee has in fact been attempting to sell the

improvements and has not received a great amount of interest from potential purchasers. It might also be argued that the location is an enhancement to the value of the improvements on leased land or not, but that is not at issue here, nor has it been established in the market. Mr. Barnes referred to his improvements as being more desirable than most on the lake. The lot he said is less desirable than some but is probably typical of 50% of the lots on Echo Lake.

The Board had questions concerning the wording of the statute where the instruction is to appraise as a "cabin site" value in ownership by the State. A distinction could be made here concerning the diminution of market value as a result of the leasehold rather than actual fee ownership, recognizing the difference in the bundle of rights. Nothing in the record would overcome the fact that it is being appraised to the owner, the State of Montana, for school trust fund revenue.

The property is appraised on the DOR appraisal cycle of three years, and leased by the state for a period of fifteen years with a five year review period. That means that within the lease period, the fee might be adjusted, depending on where the particular lot falls for valuation based on a different time cycle.

It is the opinion of this Board that the appeal of the Department of Revenue shall be granted and the decision of

the local tax appeal board be reversed.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter in accordance with 15-2-302, MCA.

2. 77-1-208, MCA. (1) The board shall set the annual fee based on full market 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.

3. 15-7-103, MCA. (5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1986 all property classified in 15-6-134 must be appraised on its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

4. State Tax Appeal Board decision PT-1993-284 DOR v. Beverly Joyce Flodberg.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be valued at the value determined by the Department of Revenue at the 1997 appraised value of \$69,343 and the decision of the Flathead County Tax Appeal Board is reversed.

Dated this 8th day of October, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, 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.