

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

BRAD GREENE,)	
)	
Appellant,)	DOCKET NO.: PT-2001-1
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

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, Brad Greene, 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. The Board received an unsolicited post-hearing submission from the appellant on August 17 and on August 20.

Mr. Greene 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 1 on the east shore of the Clearwater Outlet to Seeley Lake, 0.70 acres with 224.48 feet of water frontage in Section 4, Township 16 North, Range 15 West, County of Missoula, State of Montana. (Lease number 3061123).

3. For the 2001 tax year, the DOR appraised the subject leased lot at a value of \$50,510.

4. Mr. Greene filed a timely appeal with the Board on January 22, 2001, requesting a market value of \$27,740, stating:

Enclosed is an appraisal of the value of my cabin at Seeley Lake by the most recognized expert salesperson of Seeley Lake Cabin Lease Sites in the State of Montana.

*In other words, \$46,500, (**site alone at \$27,740**) and \$18,760.00 in fixtures), is the most I could expect to receive were I to sell my lease and cabin together. The*

DOR, (Department of Revenue), has set the value of the **site alone at \$50,150.00**. Something is wrong here, and you need to take a good look.

The reason for such a disparity is the fact that this site is in the **floodway!** and that the DOR determined its value by using unlike, inappropriate, and dissimilar properties for comparisons and then voodoo economics to arrive at a value accordingly.

I live in the real world of market realities, not of government whim. In addition, I am a Montana native and I resent the fact that my State Government could be so unfair, unjust, unconcerned, insensitive, and duplicitous.

Some years ago the State of Montana adjudicated another land I owned to be in the **floodway**, thereby decreasing its value substantially. Should this appeal be denied, then I request that adjudication re-opened. You can't have it both ways.

5. The Board has jurisdiction in this matter, pursuant to §77-1-208, MCA.

TAXPAYER'S CONTENTIONS

Taxpayer's Exhibit 1 is a document entitled "Comparative Market Analysis" prepared by Scott Kennedy, a real estate broker, of Seeley Lake. When Mr. Greene's lease fee increased at the time of its most recent renewal, he decided that the lease fee might become prohibitive. Therefore, he sought the opinion of "the foremost expert on cabin sites at Seeley Lake," Mr. Scott Kennedy, in anticipation of listing the property for sale. Mr. Kennedy performed the comparative market analysis and found a value for the cabin located upon the subject leased lot of between \$43,500 to \$46,500. Mr. Greene stated that this was the amount for which Mr.

Kennedy would be willing to list the property.

In support of the value found by Mr. Kennedy for Mr. Greene's cabin, Taxpayer's Exhibit 1 references the sales of three properties deemed by Mr. Kennedy to be comparable to the cabin located upon the subject state lease. All of these cabins are located on state leased land. All three are located on the Clearwater River, as is the subject, and are described as having access to Seeley Lake.

	Lot Size	Style	Bedrooms	Baths	List Price	Sold Price	Close Date
Comparable #1	1.4 acres	Cabin	0	0	\$46,500	\$46,500	7/99
Comparable #2	1+ acres	Cabin	2	0	\$49,900	\$49,900	10/99
Comparable #3	1 acre	Cabin	2	1	\$50,000	\$50,000	9/99

Mr. Kennedy made the following comments in relation to the comparability of the sold properties to Mr. Greene's cabin:

Comparable #1: Best supports subject property, it is located 10 lots from subject. This cabin however is in superior condition having been renovated. It also has 1.4 acres compared to .7 acre of subject. River frontage is similar. This cabin has 600 square feet of living space, 200 square feet larger than subject.

Comparable #2: Similar in condition, 14 lots from subject on Clearwater River, this cabin has 648 square feet of living space, 248 square feet larger than subject.

Comparable #3: Similar, this cabin has 621 square feet of living space, 221 square feet larger than subject, this property has more appealing views than subject.

This comparative market analysis suggested a land value of

\$27,740 (Taxpayer's Exhibit 1, page four), from which Mr. Greene obtained his requested value.

Mr. Greene disputes the DOR land value of \$50,510, upon which his annual fee is based, in view of the realtor's finding that the cabin might sell for between \$43,500 and \$46,500. Mr. Greene testified as to the realtor's opinion that the association with a state lease diminishes the value of his cabin and the cabin site because "people out there are afraid of state leases for the very reason of what's been happening with state leases as of late."

Additionally, the subject lot is in a floodplain. Several years ago, according to Mr. Greene, water came up to the cabin during a period of high water. He questioned whether the DOR used the sales of properties located in a floodplain to value the subject lot.

Mr. Greene also questioned the proximity and similarity of the DOR's comparable sales in relation to the subject site.

Mr. Greene discussed a property he once owned that was contiguous to Rattlesnake Creek near Missoula. This property was condemned because it was in the floodplain. His understanding was that the subject DOR appraisal has allowed only a ten percent reduction in recognition of the flood plain location. "Now, they're doing just the opposite. They're saying, oh, well, yeah, it's in the floodplain, no big deal. . . I just think that's duplicity. I don't think it's fair."

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.

Mr. Fairbanks stated that it is typical through the Seeley Lake-Swan area to identify sales of properties containing up to 100 feet of water frontage as the base size. Anything larger or smaller is adjusted by an increment. The rationale for this treatment, according to Mr. Fairbanks, is that "200 front foot lots sell less per front foot than 100 front foot lots and 50 front foot lots sell for more per front foot than 100 front foot lots." The DOR must have a computer-assisted land appraisal system that fairly addresses all of them. This is accomplished, according to Mr. Fairbanks, by establishing the base, or most typical size. For lake or water fronting properties, the base size is 100 front feet at \$300 per front foot and anything greater or smaller was added or subtracted at \$155 per front foot.

A particular problem in the subject appraisal task was the lack of comparable sales, according to Mr. Fairbanks.

Specific to the Clearwater Outlet to Seeley Lake, the location to the subject lot, DOR Exhibit A (page five) states:

. . . Twenty lake front sales indicated a typical value of \$122,655 for lots averaging 162 front feet of lake exposure, establishing a ceiling for valuation consideration for Clearwater Outlet. Twenty-nine sales of river fronting lots in the Seeley and Swan areas established average lots values from \$30,965 to \$34,795, respectively, indicating a minimum water access value. Smaller Cygnet Lake connecting Lindberg Lake and offering limited amenities in comparison, experienced two sales of smaller lots at \$67,040 (55'X 100') and \$109,829 (200' X 100'). . .

The Clearwater Outlet lease lots pose several valuation challenges. While affording river/boating access to Seeley Lake, no sales of comparable water fronting lots lacking important amenities have occurred. For the previous past 1993-1996 appraisal cycle, Clearwater Outlet lots were valued at \$29,750 based upon an estimated frontage and depth, that when compared to obviously more desirable Seeley Lake lots of like size (@ \$57,750), represented 51.5% of Seeley Lake lot appraisals. STAB conducted hearings on several appeals of the subject lots, citing "The Board finds that the DOR adequately addressed the Respondent's concerns about the value-diminishing features of the Clearwater Outlet lots when it made adjustments for septic and access problems by reducing the value obtained by studying lake front property sales by using the residual land value to the subject lot. The values determined by the DOR were conservative estimates." In one of the more thoughtful valuation arguments offered by a lessee, examples of adjustments (attributed to unnamed Realtors and appraisers) were listed as a *10% deduction for lack of domestic water service; a 10% deduction for evidence of surface water and flood hazard; and a 30% deduction for septic restrictions.* The value of one minus 10%, minus 10%, and minus 30% equals 56.7% to 60% good.

When a 51.5% factor is applied the average lake front lot sales at \$122,655, a \$63,176 indicated site value results. If the same factor is applied to average 1997 appraisal of the 76 Seeley Lake

waterfront properties at \$104,388, an adjusted site value of \$53,760 follows. In June of 1985, the only recorded sale of a lake lot with septic denial occurred establishing a 35% value loss. If this factor is applied the two lot sales on Cygnet Lake, a range from \$43,576 to \$71,388 emerges.

The market driven computer assisted land pricing (CALP) schedules for the 1997 lake front properties valued the primary 100 feet of lake frontage at \$1050 per front foot (FF), and the residual frontage (exceeding 100FF) at \$300 FF. Previous appraisal cycle values were \$450 FF/primary and \$170 FF/residual. When extended to a typical 200' X 200' lot, the appraisals extend as follows:

<u>1997 (1-96 Base)</u>	
(Primary) X \$1050 =	\$105,000
100' (Residual) X \$300 =	<u>30,000</u>
	\$135,000

<u>1993 - 1996 (1-92 Base) 100'</u>	
100' X \$450 =	\$45,000
100' X \$170 =	<u>\$17,000</u>
	\$62,000

1992 to 1996 appreciation for lake front lots:
 \$135,000/\$62,000 = 218%

1992 v. 1996 CALP residual pricing comparison:
 \$300/\$170 = 176%

FINAL DETERMINATION OF VALUE

1. Average Lake Front Sales: \$122,655 X 51.5% Adjustment = \$63,167
2. Average Seeley Lake '97 Appraisal: \$104,388 X 51.5% Adjustment = \$53,760
3. Cygnet Lake Sales: \$67,040/\$109,829 X .65 Factor = \$43,576/\$71,388
4. Factored '93-'96 Clearwater Values:\$29,750 X 2.18 Appreciation Factor:\$64,588
5. Factored '93-'96 Clearwater Values:\$29,750 X 1.76 Residual Factor: \$52,360
6. River Fronting Lot Sales: \$30,956/\$34,759

Following careful examination of the preceding appraisal indications, none were ignored due to total reliability, nor was any averaging method used.

#1 average lake front sales (when adjusted for lack of amenities) and **#4 factored '93-'96 Clearwater values** represent the upper level of value. **#6 river fronting lot sales** depicts a minimum value indication, but lacks comparability due to lack of water recreational benefit.

Greater confidence was found in **#2 average Seeley Lake '97 appraisal** and **#5 factored '93-'96 residual Clearwater values**, which are supported by **#3 Cygnet Lake sales** (factored for lack of septic approval).

In the opinion of the appraiser, the market value of the basic Clearwater Outlet cabin site prior to any deductions for negatives specific to lots, as of January 1, 1996, was:

\$53,000.00

Mr. Fairbanks considers the subject lot to be one of the better lots on the east shore of the Clearwater Outlet because "the improvement is located very close to the water. It's high and dry, normally." The only adjustment made to the appraisal of the lot was a ten percent reduction was for its triangular shape.

The issue of indeterminate boundary designations for state lease lots was an issue in earlier appeals filed with this Board. This Board suggested that DNRC attempt an accurate survey of these lots. According to Mr. Fairbanks, the DNRC conducted a field review of the state lease lots on the east shore of the Clearwater Outlet in 1998. The lessees were asked to meet DNRC staff on their lots to reach an agreement on the boundaries. A map was created based upon that interaction with interested lessees (DOR Exhibit B). "Now, I knew dimensions. And I started revisiting, based upon these new dimensions, how that would impact the value. And my feeling was that preliminary valuations resulted in individual lot appraisals averaging, not at \$53,000 but at \$65,000 to \$70,000 because most of these lots are now a whole lot bigger and have a great deal more frontage than I thought they would have." (James Fairbanks testimony, State Tax Appeal Board hearing, August 15, 2001). Because the DNRC has not yet addressed the dimensions of the lots on the west shore of the Clearwater Outlet, ". . .it is considered inappropriate to apply the effects of the survey to

valuation on the East Shore until a corresponding survey is accomplished for the West Shore. . ." (DOR Exhibit A, page seven).

Therefore, for tax year 1999, the DOR has valued the east shore Clearwater lots through the use of a discounted base value of \$36,000 (\$360 for each of the initial 100 front feet). Parcels smaller, or larger, than the 100' base were adjusted by adding or subtracting from the base value by multiplying the difference between the actual frontage and the 100 front foot base size times the \$155 front foot value indicated in the sale of river fronting lots.

The subject lot has 224.48 feet of water frontage and 273 feet of depth. The base rate of \$360 per front foot was applied to 100 feet of frontage (\$36,000) and the residual value of \$155 per front foot was applied to remaining 124.48 feet to arrive at a value of \$56,122. (The Board notes that the arithmetic does not agree here). This value was discounted by ten percent in recognition of the irregular shape of the lot to \$50,510.

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 board¹ 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**

1 Board of Land Commissioners

reevaluation 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.

Although Mr. Greene suggested that the DOR has not adequately recognized the impact of the flood plain on the market value of the subject lot, the Board finds that the DOR has sufficiently addressed this factor through its careful study of all of the influences discussed in DOR Exhibit A (a comparison of the appraised value of Seeley Lake lots versus river fronting lots, a recognition of suggested percentage reduction amounts in recognition of value-diminishing effects of septic restrictions, presence of surface water, lack of domestic water service, etc., discussed in prior appeals). The DOR has granted an additional ten percent reduction in recognition of the lot's irregular shape.

Taxpayer's Exhibit A, the realtor-prepared market analysis, is an indication **only** of the market value of the cabin itself, since that is all Mr. Greene owns and has the ability to sell. The suggested land value of \$27,740, upon which Mr. Greene based his requested value, lacks supporting sales evidence.

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.

In his original appeal to this Board, Mr. Greene requested that, should this appeal be denied, adjudication be re-opened on a ruling by the State of Montana concerning another parcel of land owned by Mr. Greene. Mr. Greene's statement was that this property was determined to be in a floodplain. This Board lacks authority to comply with this request.

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.

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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 remain on the tax rolls of Missoula County by the local Department of Revenue office at the 2001 tax year value of \$50,510, as determined by the Department of Revenue.

Dated this 23rd day of August, 2001.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

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:

Brad Greene
2245 Cales Court
Missoula, Montana 59802

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

Missoula County Appraisal Office
County Courthouse
Missoula, Montana 59802

Marvin Miller
Land Use Specialist
Department of Natural Resources and Conservation
Plains Office
P.O. Box 219
Plains, Montana 59859

DONNA EUBANK
Paralegal