

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	DOCKET NO.: PT-1997-158
Appellant,)	
)	
-vs-)	
)	
LOUIS CROHN,)	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, (by administrative notice of testimony provided in DOR v. Burdette Barnes, Jr. PT-1997-159), 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 Louis Crohn, 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, and administrative notice of the testimony provided in DOR v. Burdette Barnes, Jr., PT-1997-159, 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 18 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 \$99,473 for the cabin site land.

4. The lessee appealed to the Flathead County Tax Appeal Board requesting the appraisal as developed by the DOR

be set aside as invalid. Mr. Crohn did not provide a value that he believed to a correct value for the lot.

5. The County Board adjusted the value to \$79,500 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.

State's Exhibit E provided in DOR v. Burdette Barnes, Jr., PT-1997-159 but not in this appeal hearing, 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 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, 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. Crohn stated that he has been the lessee of this lot since 1954 when the lease fee was \$10.00 per year. (CTAB testimony) His reason for the appeal to the local board was the change in lease fee that resulted from the reappraisal of

the lot. The previous value of \$48,901 increased to \$99,473. The annual lease fee increased from \$1,711.58 annually to \$3,481.56.

Mr. Crohn provided a comparison of fee owned land to land that is leased. The restricted use of the leased lots compared to the use of private land creates a distinction in value not recognized in the value determination, in his opinion. He also argued that at the end of the lease period, the lease might be canceled and he would need to remove the improvements from the lot. The removal would "entail costs in excess of the value of the salvage." He described this as the risk entailed for placing improvements on the leased lot. The differences that he listed in his comparison of fee owned land to leased land were characterized as values to him, and if the DOR is not considering those differences in establishing values based on fee owned land sales, the appraisal is invalid. He added that if the determination of value is invalid the annual rental fee is "likewise invalid."

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. There is no question that having been the lessee since 1954, 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, although his conclusion that the appraisal is invalid and hence the annual lease fee is invalid is unique to his appeal. He did not present sales of property that would indicate the value determination of the DOR is incorrect.

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. 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.

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.

The DOR provided the Board with a posthearing submission requested by the Board to clarify valuation of the lot that does not have lake frontage and had been the subject of a prior appeal in which a back lot pricing had been ordered.

In that posthearing submission the DOR calculated the value to be \$91,325.

It is the opinion of this Board that the appeal of the Department of Revenue shall be granted in part and denied in part 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.

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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.