

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

RICHARD D. MORIN,)	
)	
Appellant,)	DOCKET NO.: PT-2002-9
)	
-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 February 27, 2003 in the City of Helena, 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, Mr. Morin, appeared on his behalf and provided testimony in support of the appeal. James Fairbanks, regional manager, represented the Respondent, Department of Revenue (DOR) and provided testimony in opposition to the appeal. Jeanne Holmgren, bureau chief with the Department of Natural Resources and Conservation (DNRC) presented testimony on behalf of the DNRC. An exhibit was received from Mr. Morin and from the DOR.

Mr. Morin 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 sought by the appellant.

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, west shore of Morrell Creek, 1.65 acres in Section 36, Township 17 North, Range 15 West, County of Powell, State of Montana. (Lease number 3061372).

3. For the 2002 tax year, the DOR appraised the subject leased lot at a value of \$30,000.

4. Mr. Morin filed an AB-26 form for property review with the DOR in September of 2000. As a result of this review, on October 31, 2000, the DOR reduced the land value from \$30,000 to \$15,000, citing the following reasons:

1. *Snowmobile trail (public) goes through property.*
2. *Land is in a flood plain.*
3. *Seasonal access only.*

5. By letter dated January 16, 2002, James Fairbanks notified Mr. Morin that the original value of \$30,000 would be reinstated (see Appellant's contention for pertinent text of this letter).

6. Mr. Morin filed a timely appeal with the Powell County Tax Appeal Board, requesting a market value of \$15,000, stating:

Valuation set @ \$15,000 and then changed (denied) by Jim Fairbanks, regional manager of DOR, Jan. 16, 2002.

7. The county board held a hearing on this matter on July 18, 2002. In its October 3, 2002 decision, the County Board reduced the land value to \$22,000, stating:

Due to lack of year around access, this board feels \$30,000 is in excess of fair market value.

6. Mr. Morin then appealed that decision to this Board on October 28, 2002, stating:

I believe the board was coerced by Mr. Fairbanks (Director of D.N.R. Missoula Area)(sic) to not lower valuation of lease below \$22,000 - fearing appeal by D.N.R. (?). Mr. Fairbanks provided false information @ hearing.

APPELLANT'S CONTENTIONS

Mr. Morin stated that he was aggrieved by the process before the Powell County Tax Appeal Board in that he believed the board members were intimidated by the DOR representative, James Fairbanks. His belief is that the local board members "feared" appeal to the State Tax Appeal Board of its decision. ". . . At the end of all the testimony, the board asked Mr. Fairbanks where, how far they could go, basically in setting the reduction in the lease valuation. I think he said something like twenty-five, meaning probably \$25,000. This was right at the end of the hearing. I was surprised that the board asked that, really surprised. . . They were more or less worried about being appealed to your board that

we're at here today." (Richard Morin testimony, State Tax Appeal Board hearing, February 27, 2003). In addition, Mr. Fairbanks changed his testimony several times, according to Mr. Morin.

Mr. Morin testified that his belief is that the land is worth "a lot less than \$15,000" but that he accepted the DOR's proposed reduction pursuant to the filing of an AB 26 form for property review. Mr. Morin has paid his lease fee based upon the reduced \$15,000 valuation for a period of one or two years, according to the DOR.

Mr. Morin referenced a number of value-diminishing aspects of the subject lot, including a snowmobile trail. He directed the Board's attention to a copy of a January 30, 2001 email from Steve Wallace of the DNRC to Janie Kurth and Jeanne Holmgren, DNRC coworkers. Mr. Wallace discussed the history of the access road to Mr. Morin's lot. In summary, it appears that the State of Montana sold a right-of-way to the Great Northern Railroad Company which, in turn, assigned the road to the United States Forest Service (USFS). Mr. Wallace states that the USFS decided to close this road to all access but snowmobilers. After discussion among interested parties, including leaseholders, it was decided to reroute the snowmobile trail. Mr. Wallace does not believe the current trail actually goes through Mr. Morin's lot, but does use the access road into the subject lot. Ms. Holmgren's response to Mr. Wallace's email was that "it appears that the impact of the snowmobile trail has reduced the appraised value of the state lease

in this area. How are we going to recapture that lost revenue from the snowmobilers???"

Mr. Morin testified that, from December 1 through March 30 of each year, he is unable to access his cabin.

Further, the property is not serviced by any utilities, has no fire or police protection from Seeley Lake, and has the encumbrances from the Forest Services and the State of Montana in the lease arrangement, including responsibility for road maintenance and weed control. In addition, between the high and low water mark of state leases, the public has the right of access from one state land parcel to another.

Mr. Morin also testified that the property sits in a flood plain but did not provide supporting documentation.

Mr. Morin testified that he visited with Bill Bandy, a former DOR appraiser in Powell County, presented his case for a reduced valuation and was told by Mr. Bandy that "you're possibly right." Mr. Bandy reduced the land value from \$30,000 to \$15,000.

A neighbor of Mr. Morin, Dennis Kaul on Lot 2B, contacted the DOR about receiving this \$15,000 valuation on his leased lot. Mr. Kaul leases the lot two leases south of the subject.

In a letter dated January 16, 2002, Mr. Fairbanks informed Mr. Morin that "Following review of sales, I determined that creek-fronting sites like yours were indeed selling in the \$30,000 range. I denied this recent application for adjustment. [from Mr. Kaul.] Regretfully, I am herein notifying the Department of Natural

Resources and Conservation (DNRC) that the reduction on your state lease value to \$15,000 is to be vacated and that the original \$30,000 value be reinstated." (Exhibit before the Powell County Tax Appeal Board.)

Mr. Morin questioned the comparability of his leased land near Morrell Creek in Powell County with the DOR's land sales at the Double Arrow Ranch near Seeley Lake. Many of the DOR sales used to value the subject lot were located across the county line in Missoula County at the Double Arrow Ranch property. His opinion is that the Double Arrow Ranch lots are vastly superior to the subject lot in that many enjoy year-round access and are located in a "resort" setting.

Concerning the DOR's CALP (computer assisted land pricing) model, Mr. Morin directed the Board's attention to his daughter's comments at the county board hearing. Annette Morin is seeking a graduate degree in finance and economics at the University of Wyoming-Laramie and has studied regression analysis. From the transcript of the Powell County Tax Appeal Board, Ms. Morin states: "I noticed here on your regression analysis that your R squared is .04 for your top model developed? Basically, what that means is that there is a four percent chance your estimates are accurate. . . It's extremely awful. Anybody else would take it and throw this piece of paper away. . . It's not worth anything. . . doesn't mean anything. With your R squared, what you want is .6 and above. That indicates that you have good estimates and good results from

your estimates. . . .04 is not a very reliable result is what I'm getting at. It doesn't mean anything." (Transcript of Powell County Tax Appeal Board hearing, pages 38 and 39.)

Taxpayer's Exhibit 1 is a document compiled by Mark A. Sunderman, Ph.D., Associated Professor of Finance at the University of Wyoming at Laramie. Dr. Sunderman's association with Mr. Morin is through Mr. Morin's daughter and her graduate work at the University of Wyoming. Dr. Sunderman states that his main area of study was real estate. Dr. Sunderman states that he is not a licensed appraiser, but has been actively involved in mass appraisal.

His concerns with the DOR appraisal are:

I have concerns with the way the lease rates are being determined for these cabin sites in Montana. I question the validity of basing lease rates on market value of a fee simple interest when this land is not available for sale and does not provide the same benefits as a privately owned site. Also, it is unclear the justification of a lease rate of 5%. However, I do not feel that these are issues that the State Tax Appeal Board can address. These are issues more related to Montana State law.

I am also concerned with who has the authority to arrive at the valuation of these sites. I question whether James Fairbanks has the authority to change the valuation of your cabin site. There appears to be several individuals involved in this decision and it is unclear who has the final authority. Again, this is probably an issue that is beyond the control of the State Tax Appeal Board.

On page 3 of the appraisal report prepared by James Fairbanks, a definition of value is provided. The definition given is well accepted in the appraisal industry. However, I am troubled by

the statement regarding market value of the subject DNRC cabin sites where it indicates, "...that the property rights appraised are herein considered in fee simple interest, assuming no indebtedness or encumbrances against the property." It is not clear if this last statement is based on Montana State law or rather the view of the appraiser. If it is the latter, if there are encumbrances to the use of the land these should be considered in the valuation sine they do affect market value. For example, from testimony given, it appears that your site has an easement along the stream. If this is correct, this easement should be considered in the site's valuation. Also, I do not fully understand the issue of access to snowmobiles, but again this is another factor that should be considered.

It would appear that the valuation of this site is to be based on - "The Valuation of tract land and other parcels in the area where the lease is located should serve as the basis for valuation for the cabin site acreage." Yet, there are no comparable sales in this area (see comments of page 33 of transcript of hearing). It would appear that Mr. Fairbanks is basing his estimate of value on 19 sales covering a period of 3 plus years. Further, other than the date of sale, size and sale price, no other information is provided on these 19 sales. Issues like location, access and property characteristics are ignored. It would appear from the testimony (see page 44 of the transcript of hearing) it is felt by James Fairbanks that these other factors do not impact value. This is a scary assumption. The problem I see with James Fairbanks' analysis is that he is trying to determine the value of your site based entirely on a sample of 19 sales. Arguing that their average sale price is close to \$30,000 makes NO SENSE unless the differences between these sites and your property have been adjusted for OR if these sales and your property are identical.

I feel you are entitled to documentation regarding the valuation of this site, especially when you have appealed the valuation. Even is mass appraisal is used, sufficient information needs to be provided to explain how an individual site is valued through this approach. Further, I do not feel the portions of the appraisal report provided

you (prepared by James Fairbanks) are sufficient to explain the valuation of your site. The computer printout is impossible to follow and I question its usefulness. Further, what was provided to you does not conform to Uniform Standards of Professional Appraisal regardless of what Mr. Fairbanks states (as indicated on page 42 of the transcript of hearing).

It is troubling that it appears James Fairbanks has not visited the property in question, maps provided do not accurately show the location of the property, and even the Powell County Tax Appeal Board seem confused where the property is located. It further appears that the size of the site is also in question (see page 21 and 32 of the transcript of hearing). Mr. Fairbanks is even asking you whether the property is in a flood plain. How can property be accurately valued when so little is known about it by the officials charged with arriving at an estimate of value?

It is very clear that Jim Fairbanks does not understand regression analysis. His statements regarding its use are entirely WRONG. It is possible to develop a solid multiple regression model using land. In fact, I have had better fitting models with land than with improved property (adjusted R-squared in the high .8 to low .9's). Your daughter's comments are correct - the regression model is not worth the paper it is written on. In fact, given the model results, the only thing this model proves is that the lot size has NO impact on value. Regression analysis can be a valuable tool in estimating market value. Regression analysis can be a valuable tool in estimate market value; however, more data and variables to control for time and the different characteristics of the land are needed to develop solid models.

It appears that the CALP values that are being used to value this property are being driven entirely by the base rate of \$30,000 and the adjustment value of \$800. I do not see justification for these figures either in the appraisal report or in the testimony before the Powell County Tax Appeal Board. . .

I am also surprised that James Fairbanks did not

seem more prepared and have more information to support his position before the Powell County Tax Appeal Board. In essence, he provided the board little information to make a ruling on.

DOR CONTENTIONS

Jeanne Holmgren of the DNRC provided some background on leases of state land and the associated fee or rent for private use of these lands. The DNRC is charged with the management of state school trust lands. State school trust lands were given to the State of Montana through the enabling act of 1889, at statehood, to be managed in support of schools and, in fact, that is what occurs with the revenue that is generated from leases, from forest management, agricultural uses and is distributed to the schools.

Prior to 1988, DNRC lease fees for these uses were set administratively, even though the fees were to gain full market value for those lands. The result of the administrative determination of lease fees were that the highest lease fees being charged on Placid Lake and Flathead Lake, for example, were \$150 a year. In 1988, staff appraisers appraised all state leases and applied five percent to the value that the Department of State Land appraiser found for those properties. These fees were first applied in 1988 as the leases started to renew.

Lessees experienced sticker shock because they saw a substantial increase in their lease fees.

In the 1989 legislature, it was identified that the DOR would appraise State Lands properties and a three and a half

percent rate would be applied to those appraisals.

In 1994, Senator Chet Blaylock introduced SB424 with the concern that the State of Montana was not receiving full market value for the uses and rights granted on state school trust lands. A study was commissioned from the University of Montana. This study identified, for cabin and home sites, that the appropriate rate in the marketplace would be somewhere between 8 to 12 percent of the underlying appraised value of the land.

After this study, a group known as Montrust, a group of Montanans in support of schools, challenged several state statutes and challenged whether, at three and a half percent, the State was receiving fair market value.

DNRC was unsuccessful in supporting its three and a half percent lease rate and had to go through a process to establish a rate.

A negotiated rule making procedure was undertaken, with lessee representatives, school representatives, DNRC and the Land Board. Several things were taken into consideration, including the issue of the comparability of fee simple and leased properties, and the expectations imposed by the State on the lessee, including road maintenance and weed control. (For the subject lease, Mr. Morin is responsible for maintenance of a bridge across Morrell Creek. However, the Seeley Lake Snowmobile Club was required to replace this bridge as part of the agreement to gain snowmobile access, to the advantage of the subject lot, according to Ms. Holmgren.)

The five percent lease rate was adopted in recognition of these maintenance expectations, instead of the eight to twelve percent recommended by the University of Montana study. The five percent lease rate is currently being implemented. At the time a lease comes up for review or renewal, between 2003 and 2007, the DNRC will implement a new appraised value and the five percent lease rate. The resulting increased lease fee will be phased in at 20 percent annually. The five percent lease fee will only be phased in for the first year only.

Ms. Holmgren stated that, between the high and low water mark, the public has the right of access from one state land parcel to another on state-owned parcels. The public does not have the right to picnic or to fish, for example, only the rights of ingress and egress.

For the DOR, Mr. Fairbanks testified that Bill Bandy, then Powell County appraiser, called him for advice on valuation indications for the subject area because very few vacant land sales had occurred in Powell County.

Sales history regarding Seeley Lake lots in Missoula County were available. The Missoula County lots lie within one-fourth to one-fifth of a mile from the Powell County line, according to Mr. Fairbanks.

Mr. Fairbanks informed Mr. Bandy that multiple valuation rationales existed for Seeley Lake/Missoula County properties,

depending upon the type of property. Creek or river access properties were assigned a value of \$30,000 for the base acre and \$800 for residual acreage. Mr. Fairbanks stated that an adjustment as slight as \$800 for residual acreage is an indication that two to three acres pieces are common and that these two to three acre pieces seem to sell for about the same as a one acre piece. Properties without creek or river exposure were valued at \$18,300 for the base acre and \$2,200 for residual acreage.

For the ten lots Mr. Bandy was attempting to value (five on the creek and five without creek exposure), Mr. Fairbanks speculated that Mr. Bandy assigned a value of \$30,000 on each creek exposure lot, without regard to size, and assigned a value of \$15,000 for the lots without creek exposure. Since Mr. Bandy was not under Mr. Fairbanks' direct supervision at that time, Mr. Fairbanks did not scrutinize these value assignments.

Mr. Fairbanks further speculated that Mr. Bandy's adjustment of the subject appraisal from \$30,000 to \$15,000 was the result of the assignment of the \$15,000 value for lots without water access.

When a neighboring lot owner, with creek exposure, applied to the DOR seeking the same adjustment, Mr. Fairbanks both denied the neighbor's request and reinstated the former value of \$30,000 to Mr. Morin's lot in a January 16, 2002 letter to Mr. Morin:

". . .Following review of sales, I determined that creek-fronting sites like yours were indeed selling in the \$30,000 range. I denied this recent application for adjustment. Regrettably, I am herein notifying the Department of Natural Resources and Conservation (DNRC) that the

reduction on your state lease value of \$15,000 is to be vacated and the original \$30,000 value to be reinstated. You may appeal this decision to the Powell County Tax Appeal Board."

DOR Exhibit A is a copy of a January 23, 2003 letter from Ronald Pierson, commercial appraiser for the Department of Revenue in Missoula County who is responsible for this area. Mr. Fairbanks had asked him to describe what it's like on Mr. Morin's property. Mr. Pierson wrote:

Mr. Morin's lot is adjacent to Morrell Creek is on flat ground. This desirable creekside property is easily accessible while being secluded. The access road is used by snowmobilers in Winter.

Mr. Fairbanks testified that he did not appeal the decision of the Powell County Tax Appeal Board, which was to reduce the subject appraisal from \$30,000 to \$22,000. Therefore, the DOR has accepted that value.

BOARD DISCUSSION

Legislation has determined the lease rate for state lands 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 revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values** (emphasis supplied)..."

1 Board of Land Commissioners

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.

Mr. Fairbanks, at the hearing before this Board, testified:

"I don't know that any of the properties I used to establish the 30 grand also had the same characteristics (snow mobile ingress). I know that maybe DNRC, with some of their correspondence, was concerned about the value of it. I chose not to appeal that \$22,000. . . I don't know that, based upon what Mr. Morin raised as issues and some of the other argument, that maybe it is worth somewhat less than \$30,000. . ."

The above statements would seem to reflect abandonment of any attempt by the DOR to justify its \$30,000 appraisal for the subject lot. Mr. Fairbanks further stated that values in the subject area, for the next reappraisal cycle, will be adjusted in kind based upon the reduction granted by the Powell County Tax Appeal Board in the present appeal.

A central theme of the appellant's argument is whether or not Mr. Fairbanks understands all of the tools used in the DOR appraisal model (multiple regression, for example) and, therefore, whether the appraisal itself is credible. This Board will not pass judgment on Mr. Fairbanks' statistical acumen, but is troubled by Mr. Fairbanks' decision to negate the work of another DOR employee.

Mr. Morin appropriately availed himself of the remedies provided in statute and administrative rule for grievances concerning an action of the DOR (filing of an AB 26 form for property review, and an opportunity for discussion with DOR

personnel regarding issues with the DOR appraisal). As a result of his convincing presentation, Mr. Morin received a reduction in his appraisal, from \$30,000 to \$15,000. Presumably, Mr. Bandy, as an agent of the DOR, had the authority to do so.

The Board finds that Mr. Fairbanks acted inappropriately in reinstating the original DOR value. While the DOR is empowered, pursuant to Section 15-8-601 (1) (a), MCA to assess property that has been erroneously assessed, the Board must assume that Mr. Bandy had sufficient knowledge, education and experience to make the adjustment that he did. Taxpayers should be able to rely upon the advice and action of a government official as a result of a good faith effort to resolve differences.

As stated above, as a DOR employee and appraiser, presumably Mr. Bandy met the requirements and qualifications for appraisal certification specified in administrative rule and statute. Mr. Fairbanks made no attempt to impeach the qualifications of Mr. Bandy as an appraiser.

The Board was provided no supporting evidence of **any** value indication, but it must assume that Mr. Bandy had sufficient knowledge to make an adjustment.

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 appeal of the appellant is hereby granted and the decision of the Powell County Tax Appeal Board 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 placed on the tax rolls of Powell County by the local Department of Revenue office at the 2002 tax year value of \$15,000, as originally determined by the Department of Revenue and affirmed by this Board.

Dated this 20th day of March, 2003.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

MICHAEL J. MULRONEY, 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 20th day of March, 2003, 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:

Richard Morin
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Regional Manager
Missoula County Appraisal Office
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Missoula, Montana 59802

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DONNA EUBANK
Paralegal

