

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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BRAD and DEBBIE NAY,	)	DOCKET NO.: PT-1999-16
	)	
Appellants,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE OF	)	FACTUAL BACKGROUND,
THE STATE OF MONTANA	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard telephonically on July 12, 2000, 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 appellants, Brad and Debbie Nay, appearing telephonically, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented telephonically by Appraiser Carolyn Carman, and the Department of Natural Resources (DNRC), represented telephonically by Land Use Specialist Marvin W. Miller, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board allowed

the record to remain open for a period of time for the purpose of receiving post-hearing submissions from the appellants and from the DOR. Upon receipt of said post-hearing submissions, the Board then took the appeal under advisement. The Board having fully considered the testimony, exhibits, post-hearing submissions, and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

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 property which is the subject of this appeal is leased from the State of Montana and is described as follows:

Lot 1, Echo Lake Summer Home Lots,  
Section 5, Township 27 North, Range 19  
West, comprised of approximately 1.1  
acres, County of Flathead, State of  
Montana. (State Lease Number 3053286).

3. The DOR appraised the subject leased lot at \$127,859 for the 1999 tax year. As a result of the filing of an AB 26 form for property review by the appellants, that value was reduced to \$95,894 "due to unusable area" caused by a road crossing the property. At the hearing before this

Board, Ms. Carman discovered an error on the property record card concerning the depth of the subject lot, resulting in an amended DOR value of \$73,678.

4. For the 1999 tax year, the appellants appealed to this Board on June 14, 2000 requesting a reduction in the land value to \$46,758, citing the following reasons for appeal:

*We feel the new appraisal value on our lease is too high for the following reasons:*

- 1. 1123 Blackies Bay Rd. 130' lake frontage, not as big a lot in depth, but it includes electricity, phone & septic. Asking price is listed at \$85,000. We're under the impression that any improvements on our lot are not to be included in the assessed. It should be only assessed as a basic lot.*
- 2. We are only allowed to use a small portion of this lot. The state told us we were only allowed to park out a small specified area. We tried to give some back but they refused.*
- 3. We cannot put a dock out on this lot because of the unusual layout of the lot itself. This one alone should devalue the lot by a certain amount. How many lake front properties have their own docks.*
- 4. We believe that with the recently new high water line that the lake front footage may have decreased.*
- 5. The access roads to lot #2 is shared and runs straight through our lot as well as part of the main Echo Loop road giving us more less usable space.*
- 6. Also when the time comes we will also have to share a septic system with lot #2.*
- 7. As mention (sic) in reason #1 dedeed property is not selling for more than lease property. We believe that privately owned property*

*should be valued higher than lease property. We do have other comparable listings upon request of deeded properties that show that the new appraised value of our lot is a little steep.*

*8. The property is only a summer home lot. It is not used year round as a permanent residence and should be taxed as such.*

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

#### APPELLANTS' CONTENTIONS

The Appellants are requesting the DOR appraised value from the prior (1992) appraisal cycle of \$46,758 for the subject land, which is owned by the State of Montana and leased by the Appellants. The Nays have expended effort and cost in leveling the lot for parking of overnight campers, etc., as did the previous lessee.

Appellants' Exhibit 1 is a document intended to supplement the reasons for appeal referenced in Finding 4 above. The exhibit contains 1999 real estate tax roll information pertaining to six deeded lots on Echo Lake. The Nays questioned why none of these lots have been assessed a value over \$34,000, including the Blackies Bay Road lot which sold for \$80,000 approximately one year ago and shows a DOR market value of \$33,737.

Appellants' Exhibit 2 reiterates the reasons for appeal referenced in Finding 4 and contains the closing

statement: "In closing we would like to say that we believe that privately owned property should be valued higher than leased property. We have tried listing this particular lot for sale and are finding out that it will be difficult to recover our improvements because it is on a lease lot. People back away and lose interest just for that reason. It seems any improvements we do to the lot raises our taxes and therefore we felt that our lot should remain at the previous appraised value of \$46,758." Exhibit 2 also contends that the State is unable to provide the Nays with up-to-date measurements and is, therefore, unable to confirm the true size of the lot.

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Appellants' Exhibit 3 is a three page document containing Multiple Listing Service references pertaining to three Echo Bay water-fronting properties which have sold:

SALE DATE	SALE PRICE	LOT SIZE	WATER FRONTAGE
05/23/00	\$80,000	.5 acre	130'
04/12/00	\$85,000 (included old trailer and old septic system)	.8 acre	100'
09/03/99	\$120,000 (included cabin, furnishings, boathouse with sleeping quarters, two-level deck.)	1.09 acre	152.49'

Appellants' Exhibit 4 is a copy of an October 27, 1993 letter from the Department of State Lands to the appellants granting them permission to build a toilet facility inside the existing cabin on Lot 1, stating that they need to obtain a septic permit from the Flathead County Environmental Health Service, and informing them that only one site for overnight camping would be allowed on the subject lot.

Appellants' Exhibit 5 is a copy of a February 4, 1994

letter from the Department of State Lands to the appellants stating that "The boat dock cannot be placed where you requested as it will extend in front of the Lot 2 shoreline. The long point on the front of your lot is also a problem. I suggest you contact the Flathead Regional Development Office . . . to discuss your situation. Permission to construct a dock will not be granted until a good solution to the problem has been found. . ."

Appellants' Exhibit 6 is a copy of a July 26, 1994 letter from the Flathead County Board of Commissioners to the appellants stating that their application for dock placement was denied based upon a "safety factor due to the contour of the land" and because "variance not allowed, based upon Flathead Lake & Lakeshore Regulations, Section 4.2.H.2."

Appellants' Exhibit 7 is a copy of a June 11, 1998 letter from the Department of Natural Resources and Conservation (DNRC) to the appellants. This letter discusses the issue of placement of a septic system. The DNRC informed the appellants, via this letter, that "the only solution for your situation would be to have one septic system for both Lots 1 and 2. . ." This exhibit was presented to illustrate the negative impact on market value caused by the necessity of sharing a septic system with any potential lessee of Lot 2.

Appellants' Exhibit 8 is a copy of a June 22, 2000 letter from Marvin Miller of DNRC to Brad Nay. This letter informs him that the only survey made of the subject lot, and of Lot 2 (also leased by the appellants), is the original map made when the lots were established. The appellants entered this exhibit to demonstrate that uncertainty exists concerning the exact dimensions of the subject lot.

Exhibit 8 also contains a map of the subject Lot 1 and Lot 2, also leased by the appellants but not under appeal before this Board.

The Board allowed the appellants to submit a post-hearing document, which it received by fax soon after the close of the July 12 hearing. The document is a copy of a July 19, 1994 letter from the Flathead County Regional Development Office to the Nays concerning their application to install an 8' by 30' floating dock on Lot 1. In this letter, the regional development office noted that, "After visiting the site of the proposed dock, it was apparent that there is (sic) some unusual topographical features playing a role in locating the site. First, the lot lines do not run perpendicular to the lake. Secondly, there is a lagoon that takes up much of this lot's frontage. The mouth of the lagoon is shallow which makes it hard to use the interior for dockage. The neighbor to the south would most likely place

their dock near the existing cabin where access is better and the water is deeper. The peninsula which the applicant hopes to use for the dock location appears cut off from the lot to the south and therefore, provides a safe location. Staff recommends **approval** of the requested variance and the floating dock application." (Emphasis supplied.) However, as demonstrated by Appellant's Exhibit 6, by letter dated July 26, 1994, the Flathead County Board of Commissioners chose ultimately to deny the application.

DEPARTMENT OF REVENUE CONTENTIONS

Ms. Carman stated that her mission in appraising this property was guided by the dictates of §77-1-208, MCA: (DOR Exhibit C) 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..." This statute requires that the DOR appraise state lease land as privately owned fee simple parcels.

During the hearing before this Board, Ms. Carman was reminded that the depth of the subject lot was reduced from 593 to 350 feet due to an August 29, 1995 determination of the

Department of State Lands. She stated that this error occurred because the depth correction "was made on the computer, but no notes were made on the card (property record card), unfortunately, and when we went through the last reappraisal, the values were derived from the square footage written on the card, which was the original 135' by 593'." Therefore, with the correction in depth made, Ms. Carman stated that the amended DOR value for the subject lot is **\$73,678.**

Mr. Miller, on behalf of the DNRC, spoke to the issue of the measurements of the lot. He testified that the Echo Lake state lease lots were originally established in 1956 through surveys conducted "by foresters who were not surveyors, with hand compass and chain. . ." and that "there's been nothing done, basically, since then to reestablish lot corners. So a lot of them disappeared by road construction, by activities of the lessees, by the public finding a little stake sticking up out of the ground out there and saying, oh, I'm gonna toss this in the lake. . . so, when we went out there, when Bill Wright went out there two years ago to try to reestablish the lot and start GPSing them to come up with a good survey, they discovered a large number of the individual lot corners were missing."

According to the information supplied on the 1956 map,

the subject lot contains "plus or minus" two acres. However, the effective acreage of the lot has been reduced twice: once to a depth of 350 feet to recognize that the county road and the Echo Lake Loop Road cut across the back end of the lot, and further by 25 percent to recognize the fact that the subject lot shares its driveway with Lot 2. Both Lots 1 and 2 received that 25 percent reduction in size, according to Mr. Miller. The DOR records indicate an effective acreage of 1.1 for the subject Lot 1.

Mr. Miller stated that the DNRC intends to submit a funding request to the 2001 legislative session to hire a private surveyor to resurvey all of the Echo Lake lease lots and to reestablish all of the individual lot corners in an effort to establish accurate measurements in terms of acreage and lake frontage.

In response to the appellants' argument that the subject property is used seasonally and should be taxed as such, Mr. Miller testified that it is not the intent of the DNRC to afford year-round access to its leased property. The lease lots were intended to be summer recreational leases and the State has no intent of developing and maintaining year-round access roads. Ms. Carman added that the DOR is appraising the property for the State of Montana, the fee simple owner. The State of Montana has chosen to rent the

property with certain parameters in place regarding the use of that property. The DOR is required to appraise the State's property as fee simple pursuant to §77-1-208, MCA.

DOR Exhibit A is a map depicting the subject neighborhood 891, which encompasses the Echo Lake, Peterson Lake and Abbot Lake areas of Flathead County.

The exhibit also included references to and locations of four of the sales of properties on Echo Lake used to value the subject lot:

LOT SIZE	SALE PRICE	SALE DATE
142' X 150'	\$90,000 (\$634 PER LAKE FRONT FOOT)	JANUARY 1993
154' X 210'	\$65,000 (\$422 PER LAKE FRONT FOOT)	JULY 1995
200' X 220'	\$92,500 (\$462 PER LAKE FRONT FOOT)	JANUARY 1993
192' X 277'	\$101,325 (\$528 PER LAKE FRONT FOOT.)	FEBRUARY 1995

Exhibit A also provided two examples of recent lease agreements on Echo Lake: a 170' X 275' lot with a DOR appraised value of \$102,428 and an annual lease amount of \$3,548.98; and a 127' X 191' lot with a DOR appraised value of \$69,343 and an annual lease amount of \$2,427.01.

DOR Exhibit B is a copy of the CALP (computer-assisted land pricing) model used for neighborhood 891.FF, the

subject neighborhood. Fourteen sales were included in the table, with only nine being used in land sales analysis. A base rate of \$684 per lake front foot was determined, based on a standard lot size of 100 feet of lake frontage and 250 feet of depth.

DOR Exhibit D is a document outlining the history and procedure governing the DNRC lease program in western Montana. Currently, the annual lease fee is at 3.5 percent of the full market value, defined in §15-8-111, MCA, as determined by the Department of Revenue. Leases are renewed over a five year period with a staggered lease fee review. All leases have a 100 foot setback from all bodies of water for placement of improvements other than docks or boat houses. This 100 foot strip also provides for members of the public to enter state land bordering the leased areas. The public cannot picnic, camp, fish, etc. within this 100 foot setback area. The lessee has the sole right to enjoy all access to the water frontage associated with the lease. The appraised value of these leased properties is subject to the DOR's cyclical reappraisal made pursuant to §15-7-111, MCA.

DOR Exhibit E is a copy of a January 14, 1998 letter to three employees of the Flathead County Appraisal Office from Jeanne Fairbanks, west side supervisor of the DNRC's Special Uses Management Bureau. This letter also discusses

the implications of the 100 foot setback from all bodies of water fronting state lease lots and contains reference to the applicable statutes governing state lease fees (§15-7-111 and §77-1-208, MCA.)

DOR Exhibit F is a copy of pages taken from the RE/MAX of Bigfork web page concerning recent listings of vacant land properties on Echo Lake. Ms. Carman stated that she offered this exhibit to bolster the DOR's position that its appraisal is an accurate reflection of market value in the Echo Lake area. These sales listings were not used to value the subject lot.

DOR Exhibit G is a copy of the property record card for the subject lot. (The Board notes that it contains an erroneous reference to a depth of 593 feet resulting in an appraised value of \$98,894 after a reduction made pursuant to an AB 26 review.) Page two of DOR Exhibit G shows the calculations used to arrive at the original value of \$127,869. The subject 135 feet of lake frontage was valued at \$685 for the first 100 feet of frontage (\$68,500). The remaining 35 feet was valued at a residual value of \$415 per lake front foot (\$14,525). A depth factor of 1.5 was assumed, based upon 593 feet of usable depth, resulting in a value of \$127,869. The 1999 AB 26 review resulted in a reduction to \$98,894 "due to unusable area" caused by a road crossing the property. As

discussed above, this value was further reduced to \$73,678 in recognition of the error made on the property record card regarding the depth of the lot. Page three of Exhibit G also contains a State Forestry Department map of the Echo Lake Summer Home Lots to depict the location of the subject Lot 1. and the notation that the usable depth of Lots 1 through 20 is assumed to extend only to the road.

DOR Exhibit H is a copy of the DOR Procedure 2002-Valuation of Department of State Lands Cabin Site Leases dated December 16, 1994. The procedure is to serve as a guideline to DOR appraisers when appraising state-owned cabin site leases. The procedure states that the annual fee for Department of State Lands (now DNRC) cabin site leases is determined by the DOR pursuant to §77-1-208, MCA. The procedure further states that the appraiser is responsible for determining a value for cabin sites for each appraisal cycle. The valuation of adjacent land parcels should serve as the basis for valuation of the cabin site acreage. The exhibit also contains a copy of the controlling statute, §77-1-208, MCA.

DOR Exhibit I is a copy of several photographs of the subject property, with a view of the "extra parking area", the driveway, yard, lake and cabin, a view from cabin deck and a view from the lake of the cabin and yard. Exhibit I also

contains copies of photographs of the property associated with lease #3052042 which was referenced on DOR Exhibit A as a property whose lessees have agreed to an annual lease payment of \$3,548.98 based upon a DOR appraised value of \$102,428. This lease agreement was effective in 1999. Further, Exhibit I contains copies of photographs of the Blackies Bay property, referenced by the appellants in their Exhibits 1 and 2, which sold for \$80,000 on May 23, 2000.

DOR Exhibit J contains Ms. Carman's answer to each of the issues raised by the appellants in this appeal:

*The first question asks that we use 1125 Blackies Bay Rd as a comparable to this property. It has 130 FF. **This property is not comparable to the Blackies Bay property in that this is a level property with a large area for parking many cars, boats, Campers. The property at Blackies Bay is steep in nature and will have limited parking ability. The property located at 1074 Echo lake rd. is much more comparable in that it is a level property however it is only 150 feet deep, its asking price was \$132,500 and it has sold.***

*2. they are only to use a small area. **This lot has more useable area then (sic) the majority of lots on Echo Lake.***

*3. They say they cannot put a dock out and that this devalues the lot. **I checked with DLC and they said it is required that all new docks be floating docks. They nor I could see why a floating dock would not work in this***

**area.**

4. concern of the recently new high water line the lake front footage may have decreased.

**The lake has not maintained its record high, and its back to normal.**

5. The access road to lot 2 is shared and runs straight through the lot as well as part of the echo lake loop road giving less usable space.

**DOR has valued the lot as being only 539 feet deep to adjust for the unusable area. And the Nays also lease lot 2.**

6. Concern of a shared septic with lot 2.

**The Nays also lease lot 2 and the situation hasn't happened yet.**

The remainder of Exhibit J concerns a discussion of the comparable properties used by the DOR in valuing the subject. The DOR comparable properties were discussed above. A further discussion item in Exhibit J was the issue of the seasonal use of the subject property. The DOR's response is that the lease states that it is not intended for year round inhabitation, as discussed above by both Mr. Miller and Ms. Carman.

In response to Appellants' Exhibit 1, the 1999 real estate tax roll information for five deeded properties, Ms. Carman stated that the market value referenced on those documents is actually the phase-in value, not the actual market value. The Montana legislature attempted to mitigate

the impact of rising property values in certain areas of the state by phasing in the effect of those increases over a period of time. The market values referenced on Exhibit 1 are thus phased in values, or only percentage portions, of the full market value for these properties. For example, the 1123 Blackies Bay Road property, which sold for \$80,000 on May 23, 2000, actually carries a 1999 DOR market value of \$64,760. (The 1999 phase-in value for this property is \$33,737.) The same would hold true for the other properties referenced on this exhibit. As a post-hearing submission, the Board requested the DOR to provide the property record card for the Blackies Bay property. The Board received this document on July 17, which confirmed the DOR testimony that the actual 1997 appraised (market) value of this property is \$64,760.

#### BOARD DISCUSSION

One of the issues raised by the appellants is that the DOR should not appraise the lease lots in the same manner as privately owned lots due to the restrictions imposed by the lease agreement and the lack of the "full bundle of rights" commonly associated with fee simple ownership of property.

In attempting to address this issue, the Board 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 that "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, which was 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..."

**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."

Senator Himsl testified that "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 DOR's statutory mission, pursuant to §15-8-111, MCA and §77-1-208, MCA, is to arrive at market value, or what a property would sell for on the open market. The comparable properties presented by the DOR indicated a base price of \$684 per front foot for what it considers a standard 100 foot by 250 foot lot. The Board is satisfied that the DOR has arrived at a valid indicator of market value for the subject lot.

The appellants have valid concerns about future increases in lease fees but this Board has no jurisdiction in the establishment of lease rates. 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

Department of Natural Resources and Conservation, 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."

Future large 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*. In both instances, the Board stated that "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.**" (*Emphasis added*) However, in this appeal, only the value of the land has been contested.

The Board finds that the DOR has properly followed its mandates in assigning market value to the subject property, pursuant to §77-1-208, and §15-8-111, MCA. Further, the appellants have not demonstrated, through the use of sales information relevant to the appraisal cycle at issue herein, that the DOR value is in error. The sales information

presented by the taxpayer in Exhibit 3, while perhaps indicative of current market trends, concerned sales occurring after the cut-off date of January 1, 1996 which is required for the current appraisal cycle. The requested value of \$46,758, the value assigned for the prior (1992) cycle, was not supported by probative and credible evidence.

The appellants lease both the subject Lot 1 and adjoining Lot 2. There are residences on both Lots 1 and 2, but Lot 2 is the only lot with a boat dock. The Board questioned both Mr. Miller and Ms. Carman regarding the effect of the prohibition against dock placement upon the desirability and marketability of Lot 1. Mr. Miller stated: "In my opinion, yeah, it would have a slight impact in the valuation of the property, in the appeal of the property on the market as to whether or not people could get their water sports toys in and out of the lake there, or dock them there at that site." He was asked his opinion concerning a hypothetical scenario in which, if both Lots 1 and 2 were available for lease, which would be more desirable. His opinion was: "Definitely Lot 2. I personally feel that it's a much nicer lot, knowing what I know about both of them."

Ms. Carman acknowledged that the DOR appraisal has not recognized the appellants' inability to put a dock on Lot 1. She was not aware if any of the sales used by the DOR to value

the subject lot were also of properties where the ability to install a dock does not exist. Ms. Carman's response to the question regarding the effect of the prohibition against dock placement upon the desirability and marketability of Lot 1 was: "It probably would affect its desirability on the market a little bit."

In the Board's opinion, a prime motivator in either purchasing or leasing a lake property is the ability to access and use the lake. The lessees of Lot 1 do not currently enjoy that benefit. In effect, the situation existing for the appellants at the time of this appeal is that, in order to have a dock, they have to be leasing Lot 2. The Nays testified that this may not always be the case. Their testimony was that it is becoming too expensive for them to continue leasing both lots.

The Board will therefore order a reduction in the amended DOR value of \$73,678 by ten percent in recognition of the effect of the prohibition against dock placement imposed upon the subject lot.

#### **CONCLUSIONS OF LAW**

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

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be

assessed at 100% of its market value except as otherwise provided.

3. **§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.

4. 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)). The Board concludes that the DOR has met its burden.

5. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1)**,



ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Flathead County by the Assessor of that county at the 1999 tax year value of \$66,310, as determined by this Board.

Dated this 21st day of July, 2000.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

( S E A L )

\_\_\_\_\_  
JAN BROWN, Member

\_\_\_\_\_  
JEREANN 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 21st day of July, 2000, 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 and Debbie Nay  
Box 20 Site 10  
Cardston, Alberta T0K 0K0  
Canada

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

Attn: Carolyn Carman  
Flathead County Appraisal Office  
Box 920  
Kalispell, Montana 59903

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

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DONNA EUBANK  
Paralegal