

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SUSAN J. WHITE,)	DOCKET NO.: PT-1997-80
)	
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE OF)	<u>AMENDED</u>
THE STATE OF MONTANA)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on January 20, 2000, in the City of Missoula, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Susan White, appearing on her behalf, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR) was represented by Appraiser James Lenington. Testimony was presented and exhibits were received. The Board allowed the record to remain open for a period of time for the purpose of allowing post-hearing submissions from the DOR and from the taxpayer. 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 subject of this appeal is described as follows:

Lot 14, Seeley Lake Outlet East, Section 4, Township 16 North, Range 15 West, County of Missoula, State of Montana. (Lease Agreement Number 3061405).

3. The DOR appraised the subject leased lot at \$42,400 for the 1997 tax year.

4. For the 1997 tax year, the taxpayer appealed to the Missoula County Tax Appeal Board on January 16, 1998 requesting a reduction in the land value to \$36,000, citing the following reasons for appeal:

Lot has never been surveyed-unknown acreage/
Lot is in floodplain and was flooded in 1997/
Not able to have sewer-yet places (sic)
nearby are sewerable (sic)/State has the
authority to change the boundaries at
will/Bank won't lend on leased property./Poor
road access-other side has county road.

5. The taxpayer appealed to this Board on February 13, 1998, stating "County tax appeal board decided this was not in their jurisdiction and the State Tax Appeal Board should hear

it."

6. Pursuant to Section 77-1-208, MCA, this Board accepted jurisdiction from the Missoula County Tax Appeal Board.

TAXPAYER'S CONTENTIONS

At the hearing before this Board, the taxpayer amended her requested land value to "between \$36,000 and \$39,000." The appeal concerns land leased from the State of Montana. Upon questioning by this Board concerning how she arrived at her requested value, Ms. White stated "to tell you the truth, I can't actually remember. It seems like I deducted what the price of what I thought my cabin was worth from what I bought it, the whole thing, for and came up with that amount, but it wasn't very scientific, I'll tell you that." She testified that she purchased the subject property in August of 1996 for \$60,000. The purchase price included the improvements (a cabin, a shed, a small bunkhouse, a pumphouse, an outhouse and a 187 foot long dock) and the right to lease the land from the State of Montana. She acknowledged that, "after doing all this research, I probably paid too much for it."

Ms. White testified at the hearing that her lot was surveyed last summer by the Department of State Lands and that she "received a check back. . . I got money back. And I think that the \$42,400 now has been lowered to, I think, it's forty-something." She stated that the survey of her lot resulted in the determination

that her lot contains 1.22 acres rather than the 1.54 acres originally assumed by the Department of State Lands.

The taxpayer testified as to her understanding of the manner in which her lot value was determined (Taxpayer's Exhibit 1): "All Clearwater Outlet Sites were valued in comparison to lake front property. Then a uniform 51.5% deduction was applied to set the standard of value (\$53,000). An additional percentage was taken off certain lots due to other undesirable aspects. My lot (#14) had an additional 20% deduction due to the marshy area at river's edge that makes it necessary to have a 187-foot dock . . . I was told that the East Side lots were valued as follows:

Lots 1-5:	\$53,000
Lots 6-9:	\$47,700
Lots 10-30:	\$42,400

On the West Side the Lots also ranged from \$53,000 to \$42,400.

The 51.5% valuation was placed on the river frontage to address the negatives of: lack of domestic water service (10%), surface water and flooding hazard (10%) and septic restrictions (30%). This valuation was given to all the river lots. . . "

Taxpayer's Exhibit 6 is a map of a portion of the area in which the subject lot is located. Ms. White testified that the "hatched" area of this map indicates the presence of a floodway. She stated her understanding that a floodway is "where the main river current goes when it floods." The shaded area of the map

indicates the presence of the 100 year flood plain. She pointed out that the subject Lot 14 is located primarily in the floodway. Ms. White questioned why lots on the west side of the Clearwater Outlet to Seeley Lake, which are not impacted by floodway and flood plain restrictions, have also received this discount. The similar treatment of properties not equally impacted by negative influences has resulted in inequity, in her opinion.

Additionally, the lots on the west side of the Clearwater Outlet enjoy access to a maintained county road which affords year-round accessibility, and fire and police protection. East side lots do not enjoy these amenities. She stated that she has to snowshoe into her cabin in the winter.

Ms. White also questioned whether the DOR appraisal adequately reflected the less desirable nature of river front property in comparison to lake front property.

The taxpayer directed the Board's attention to an aerial photograph, which she did not submit as an exhibit, of the Clearwater River to compare the length of docks necessary to reach the water. She pointed out that she has a 187 foot dock due to the "swampy" nature of her lot's river frontage. Other lots did not require docks of that length to reach the river.

Ms. White testified that the subject lot did flood in the spring of 1997. "I was, thank God, very lucky. It got to the baseboards but it never got inside my cabin. But it flooded all

the outbuildings." She stated that she did file and collect upon a flood insurance claim (Taxpayer's Exhibit 3). Taxpayer's Exhibit 4 is a copy of a letter from Richard A. Miller of Missoula to Susan White. In this letter, the author describes what he saw on the subject Lot 14 in May of 1997: ". . .While on the CWR (Clearwater River) in May of '97 I paddled up among the trees (with the high water) and entirely around your cabin on lot #14 East side CWR. I was able to completely circumnavigate the cabin without scraping bottom. . . The level of the water was so high that it actually was even with the bottom row of siding on the cabin, as well as level with the bottom of the floor joists. . . Since your out-buildings sit quite a bit lower to the ground than your cabin, I can only imagine the damage inflicted there by this high water . . ."

Taxpayer's Exhibit 5 contains several pages describing real estate listings for state leases on the Clearwater River. These documents indicate that a one-room cabin, 20' by 30', with an outhouse and a dock on 1.4 acres on the west shore of the Clearwater River sold for \$46,500 in July of 1999. This lot has no septic restrictions and is on a county maintained road. Another lot containing a 648 square foot cabin with an outhouse and a single car attached garage on a county maintained road sold for \$49,900 in October of 1999. Lot 21, east shore of the Clearwater River and seven lots to the south of the subject property, sold for \$17,000. This was a sale of bare land only with no improvements.

The Board also received a post-hearing submission from the taxpayer on February 11, 2000. This document also contains the taxpayer's contention that West Shore lots not impacted by flood and septic restrictions should not have received discounts for those negative influences along with the East Shore lots which do suffer from those restrictions. In addition, West Shore lots enjoy better road access with police and fire protection and maintenance of utilities in winter. Ms. White also included documents pertaining to the sale of creek frontage properties, the sale of a lease property, a listing on a creek property and a letter from a Missoula realtor stating that flood plain restrictions negatively impact a property's market value.

DEPARTMENT OF REVENUE CONTENTIONS

The DOR submitted its testimony in opposition to this matter by way of a post-hearing submission received February 3, 2000. It also responded to some of Ms. White's questions concerning the subject appraisal in that fashion. The following is a summarization of the DOR's position in this matter, from the post-hearing submissions:

Introduction: In 1983, Montana law required that cabin site licenses and fees be determined at 5% of the current market value of the property. . . in 1989, 77-1-208, MCA, was amended requiring the Department of Revenue (DOR) to appraise the cabin sites in the course of reappraising property subject to taxation. This change made available the property appeal processes necessary to resolve valuation disputes. Additionally, the fee was changed to 3.5% of value (70% of the original 5% to address leasehold value.) In the summer of 1989, county appraisal offices (DOR) supplied DNRC with

values for cabin sites consistent with ad valorem tax values based on 1982 market sales. In 1993, DOR supplied state lease values were based on January 1992 market indications. For 1998, DNRC is provided values based upon current market influences consistent with a recently completed statewide reappraisal. While ad valorem tax appraisals affected by Senate Bill 195 were "phased-in," DNRC state lease values were affected in pertinent part by 77-1-208, MCA: *"The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustment as a result of phasing in values. Market sales of lake properties increasing dramatically in the past few years have consequently influenced cabin site values for current renewals. . . ."*

Purpose of appraisal: The purpose of the appraisal is to estimate the current market value of the subject DNRC cabin site lease as of January 1, 1996. DOR procedures for the valuation of DNRC leases provide in pertinent part that the annual fee for the DNRC cabin site leases is based on the full market value as determined by the DOR (77-1-208, MCA). The valuation of tract land and other parcels in the area where the lease is located should serve as the basis for valuation of the cabin site acreage. To this end, the property rights appraised are herein considered in fee simple interest, assuming no indebtedness or incumbrances against the property. . . .

General description of the concept: The Computer Assisted Land Pricing (CALP) system is based on the principle that it is possible to arrive at a reasonable and satisfactory estimate of land value through the application of various incremental adjustments and influence factors to a BASE PRICE paid for a unit of land. The unit of land may be a standard lot size in front feet, or in acres. Once the BASE SIZE and BASE VALUE is determined, the PRIMARY and RESIDUAL VALUES are assigned. Parcels that are smaller or larger than the BASE are adjusted from the BASE VALUE by the residual . . .

Clearwater Outlet: Along both sides of the Clearwater River exiting Seeley Lake in Section 4, T16N, R15W, the *Clearwater Outlet* leases number thirty-two on the east shore and twenty-four on the west side. On-site review of each lot provided a detailed description of amenities (or lack, thereof) useful in applying percentage reductions applied previously by the CTAB. At issue throughout CTAB and STAB hearings was the lack of clear lease delineations describing actual frontage and depth measurements useful in valuing water-fronting lots. DNRC has plans to measure historical use and place corner markers with the help of the lessees, then survey the area. The same procedure was accomplished

at Elbow Lake in 1997. Until provided surveyed lot measurements by DNRC, the Clearwater Outlet lots will be "site valued" measuring the Seeley Lake access value of wide river frontage.

Value Determination Discussion: The Clearwater Outlet lease lots pose several valuation challenges. While affording river/boating access to Seeley Lake, no sales of comparable water fronting lots lacking important amenities have occurred. For the previous past 1993-1996 appraisal cycle, Clearwater Outlet lots were valued at \$29,750 based upon an estimate frontage and depth that, when compared to obviously more desirable Seeley Lake lots of like size (@ \$57,750), represented 51.5% of Seeley Lake lot appraisals. STAB conducted hearings on several appeals of the subject lots, citing "The Board finds that the DOR has adequately addressed the Respondent's concerns about the value-diminishing features of the Clearwater Outlet lots when it made adjustments for septic and access problems by reducing the value obtained by studying lake front property sales by using the residual land value to the subject lot. The values determined by the DOR were conservative estimates." In one of the more thoughtful valuation arguments offered by a lessee, examples of adjustments (attributed to unnamed Realtors and appraisers) were listed as a 10% reduction for lack of domestic water service; a 10% deduction for evidence of surface water and flood hazard; and a 30% deduction for septic restrictions. The value of one minus 10%, minus 10%, and minus 30% equals 56.7% to 60% good. When a 51.5% factor is applied the average lakefront lot sales at \$122,655, a \$63,167 indicated site value results. If the same factor is applied the average 1997 appraisal of the 76 Seeley Lake waterfront properties at \$104,388, an adjusted site value of \$53,760 follows. In June of 1985, the only recorded sale of a lake lot with septic denial occurred establishing a 35% value loss. If this factor is applied the two lot sales on Cygnet Lake, a range from \$43,576 to \$71,388 emerges.

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

<u>1997 (1-96 Base)</u>		<u>1993-1996 (1-92 Base)</u>	
100' (Primary) X \$1050	=	\$105,000	100' X \$450 = \$45,000
100' (Residual) X \$300	=	30,000	100' X \$170 = \$17,000
		<u>\$135,000</u>	<u>\$62,000</u>

1992 to 1996 appreciation for lake front lots: \$135,000/\$62,000 = 218%
1992 v. 1996 CALP Residual pricing comparison: \$300/\$170 = 176%

FINAL DETERMINATION OF VALUE

1. Average Lake Front Sales:	\$122,655 X 51.5% Adjustment	=	\$63,167
2. Average Seeley Lake '97 Appraisal:	\$104,388 X 51.5% Adjustment	=	\$53,760
3. Cygnet Lake Sales:	\$67,040/\$109,829 X .65 Factor	=	\$43,576/\$71,388
4. Factored '93-'96 Clearwater Values:	\$29,750 X 2.18 Appreciation Factor	=	\$64,558
5. Factored '93-'96 Clearwater Values:	\$29,750 X 1.76b Residual Factor	=	\$52,360
6. River Fronting Lot Sales:			\$30,956/\$34,759

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

#1 average lake front sales (when adjusted for lack of amenities) and **#4 factored '93-'96 residual Clearwater values**, which are supported by **#3 Cygnet Lake sales** (factored for lack of septic approval).

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

\$53,000.00

Previous pages discuss the valuation difficulties encountered in appraising the Clearwater River Outlet lots extending below Seeley Lake. The lack of specific lot measurements made comparisons to other similar waterfront sales difficult, at best. As discussed, a reasoned \$53,000 *site or water-access value* was considered to be an appropriate (if not conservative) appraisal.

In the fall of 1998, DNRC accomplished a field review of the EAST SHORE lots to determine agreement among lessees in establishing lease boundaries. Lessees were notified prior to the review, and aided in the setting of "pins" which were later surveyed by Eby and Associates, out of Kalispell. (A similar survey is planned for WEST SHORE lots in the fall of 1999).

In March of 1999, this appraiser was provided a copy of the EAST SHORE survey. The individual measurements were, on average, dramatically larger than previously estimated. For 1992 valuation considerations, average Outlet lot frontage and depth was estimated to be 175' X 200'. Ms. Eby's survey establishes the average frontage and depth to be 213' X 327'!

Using this updated lot size information allows for comparative analysis with other waterfront parcels on a 'foot by

foot' basis. Preliminary valuations resulted in individual lot appraisal averages between \$65,000 and \$70,000 (prior to adjustments for "lack of amenity").

Following discussions with DNRC, it is considered inappropriate to apply the effects of the survey to valuation on the East Shore until a corresponding survey is accomplished for the West Shore.

Therefore, for 1999, the appraiser has valued the East Shore Clearwater Outlet lots through the use of a discounted BASE VALUE of \$36,000 (\$360 for each of the initial 100 front feet). Parcels smaller, or larger than the 100' BASE are adjusted by *adding or subtracting from the BASE VALUE* by multiplying the difference (between the actual frontage and 100FF) times the \$155 front foot value indicated in the sale of river fronting lots.

East Shore Outlet lots (adjusted for property negatives) prior to receipt of the subject survey, averaged \$44,809. The average adjusted East Shore lot values following application of survey delineations, now average \$44,738.

The DOR's post-hearing submission contains a document entitled "DNRC Leases Subject to DOR Valuation in Missoula County 1997 Cycle Values (1-1-96 BASE YEAR)." The document, containing a notation that the DNRC completed a survey of the East Outlet leased lots on 12-8-98 and delivered those measurements to the DOR on 3-19-99, includes a listing of Clearwater Water Outlet, East Shore, leases with property identifiers including lessee name, property description, etc. This document identifies the subject property under Geo-Code 04-2540-04-2-01-29 and Lease Number 3061425. Along with site characteristics and a property legal description, the document shows that the subject property's assessment includes a 20 percent reduction from original appraised value of \$50,414 due to "marshy" water frontage ("100' Dock over marsh.") The property contains 1.22 acres with 189 feet of water frontage and a depth of

271 feet. The DOR has assigned a primary valuation of \$360 per front foot and a residual valuation of \$155 per front foot to the subject neighborhood. The 20 percent reduction afforded the subject assessment due to "marshiness" resulted in an appraised value of \$40,331 for tax year 1999.

BOARD DISCUSSION

The subject property was surveyed during the latter part of 1998, resulting in a reduction in appraised value from \$42,400 to \$40,331. This reduction in value came as a result of the survey indicating the property contained less than the 1.54 acres previously assumed. The Board will order a reduction in the 1997 appraised value to \$40,331 based upon the survey results.

At the hearing before this Board, the taxpayer requested a value "between \$36,000 and \$39,000." The Board notes that the revised valuation reflects an assessment very close to the upper end of the taxpayer's requested value.

The taxpayer presented sales information concerning several properties. The Board notes that the sale of "a one-room cabin, 20' by 30', with an outhouse and a dock on 1.4 acres on the west shore of the Clearwater River" for \$46,500 in July of 1999 and the sale of "another lot containing a 648 square foot cabin with an outhouse and a single car attached garage on a county maintained road for \$49,900 in October of 1999" are apparently sales of the improvements only. The record does not indicate that the DNRC has

actually sold any of the Clearwater Outlet lots. The reference to improvement sales is, therefore, irrelevant in a discussion of the validity of the assessment of the subject **land**.

The other sales referenced by the taxpayer: the sale of Lot 21, state lease # 3062773, sales date 02/06/98 for \$17,000; the sale of 2.30 acres with 300' of Morrell Creek frontage (Seeley Lake area) for \$39,000 in October of 98; the sale of 2.4 acres with creek frontage in the Seeley Lake area for \$44,500 in September of 1999; the sale of 6.15 acres in the Seeley Lake area "overlooking a small creek" for \$45,000 in November of 1999 and a listing for 2.96 acres fronting Morrell Creek in the Seeley Lake area for \$69,000 (not yet sold) all occurred beyond the DOR base date of January 1, 1996 for the current appraisal cycle. For the current cycle, the DOR used sales occurring in the 1993-1996 time frame. The above sales would not have occurred and, thus, would not have influenced the DOR's sales data files for the 1997 tax year at issue.

The Board also finds that the record does not contain substantial and credible evidence in support of a further reduction in value by comparison to west shore lots with "better access, police and fire protection, lack of flood plain restrictions."

The Montana Supreme Court has determined, in both of the following cases:

When the taxpayer's property is appraised at market value, he cannot secure a reduction of his own assessment even if he is able to show that another taxpayer's property is under appraised. Patterson v. Department of Revenue, 171 Mont. 168, 557 P.2d 798 (1976).

. . .If his own assessment is not out of proportion, as compared with valuation generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much. State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931).

The Board received a letter from the taxpayer on March 7, 2000 questioning why her property's assessment did not reflect a full 25 percent reduction for the presence of standing water, as discussed in the DOR's post-hearing letter of explanation regarding the valuation of Missoula County Department of Natural Resource cabinsite leases (" . . . the maximum adjustment for lots is -25% . . .To qualify for the 75% good, standing water must have reached and damaged property improvements." In this letter, Ms. White argued for the full 25 percent reduction due to her exhibits and testimony regarding flooding which damaged her property improvements in May of 1997 (see full discussion under "taxpayer's contention's" above).

In view of the fact that this issue was not fully examined during the hearing before this Board due to the unfortunate circumstance that the appropriate DOR representative was unaware of the hearing date and, therefore, was forced to send a substitute who was not as knowledgeable about the subject appraisal, in view of the taxpayer's evidence and testimony regarding the 1997 flooding of the

subject property which demonstrated that water did reach and damage her property improvements, and in view of the DOR's post-hearing evidence referencing other lots which were given the maximum 25 percent reduction for standing water that damaged property improvements, the Board will order a further five percent reduction to the subject appraisal. (The subject assessment has already been granted a 20 percent reduction, presumably for excess swampiness along the shoreline.)

CONCLUSIONS OF LAW

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

2. **Section 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. **Section 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 of 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).

5. The Board will adopt the results of the 1998 DNRC survey of the east shore lots as they apply to the subject assessment for tax year 1997, the year at issue. *The Board will also order a further five percent reduction to be applied to the subject assessment as discussed above.*

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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 entered on the tax rolls of Missoula County by the Assessor of that county at the 1997 tax year value of \$38,314, as determined by this Board. The appeal of the taxpayer is therefore granted.

Dated this 9th day of March, 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 9th day of March, 2000, the foregoing Amended 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:

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