BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

MARILYN A. & DANIEL E. HARMON, Appellants, -vs- THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA, Respondent.	)	DOCKET NO.: PT-1999-19 FACTUAL BACKGROUND, CONCLUSIONS OF LAW, ORDER and OPPORTUNITY FOR JUDICIAL REVIEW

The above-entitled appeal was heard on April 26, 2000, in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayers presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Appraisers David Anderson and Carolyn Carman, and the Department of Natural Resources (DNRC), represented by Land Use Specialist Marvin W. Miller, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and a schedule for post-hearing submissions was established. The Board then took the appeal under advisement; and 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:

STATEMENT OF ISSUE

The issue before the Board in this appeal is the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA.

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 taxpayers are the owners of the property which is the subject of this appeal and which is described as follows:

> Lot 34, Rogers Lake, Section 30, Township 27 N, Range 23 W, .67 acres, County of Flathead, State of Montana. (Assessor code #0976618).

3. For the 1999 tax year, the DOR appraised the subject leased lot at a value of $43,870.

4. The taxpayers appealed to the State Tax Appeal Board on January 11, 2000, requesting a reduction in value to $15,000, stating:

This is state lease land. The size of the lot has changed from .75 to .67. We do not own the lease up to the lake-we have a 100 foot set-back. Lease properties on this lake are not selling well and if they do sell in the $15,000-$20,000 range while private property owners on the

east side of the lake have theirs listed for $235,000 to $890,000. To date I do not know of any of these properties selling, but you can see the huge difference in asking prices for private land on Rogers Lake versus State Lease Land.

The market for State Lease Land is very poor. Some of the land with cabins on it has been for sale for six years and has not sold. Most all of the lease sites that did sell sold at at (sic) a much reduced price. I have saved any real estate listings I have seen for this area and will show them to you.

We are concerned that we are being appraised for our land as though it were private land but it is not private land and, therefore, accordingly does not seem to merit the same selling prices. If we are to be appraised at Fair Market Value then it should be so. Does that not mean that it should be appraised at what it would sell for? I assure you we could not get $43,870.00 for the lease lot we are now on. The State Lease lot #33 next to us just sold this past summer for close to $12,000.00 and this was with a small cabin on it. We anxiously await your reply. Thank you.

TAXPAYERS' CONTENTIONS

Mrs. Harmon stated that she had lived on the property for six years and had "kind of kept track of the properties on the lake that have sold." She testified that "although I don't have the records from the court as to what they paid, we have talked to each person individually and they have told us what they paid for the properties. The reason we're here today is because we don't agree with how the State is appraising these properties. To appraise a leased property like it's private property is kind of like comparing fool's gold to real gold. On the surface looking at them, they look just alike. When you drive by the leased property, it looks just like private property... But, when you put it on the

market, that's where the difference lies. Real gold sells for a high price, and fool's gold sells for near nothing. And that's kind of how it is on Rogers Lake. The private properties are sky-high; the leased lots you practically have to give away."

Taxpayers' Exhibit 1 is a thirteen-page document. Page one is a copy of *Cabinsite Rules and Regulations* issued by the Montana Department of Natural Resources & Conservation, Trust Land Management Division. The fifteen following rules are "minimum rules and regulations" that "will be observed on all State lands leased for home or summer cabinsites":

l. Area must be kept free of debris, garbage, trash and any other unsightly objects. This includes lakeshores or streams when adjacent to area.

2. Area must be kept free of fire hazards.

3. Incinerators, fireplaces, stoves or any other type of burner must be fireproofed by use of spark proof screens. All fires must be extinguished prior to leaving area.

4. The use of firearms or fireworks is not permitted in the area, but such may be kept on the area.

5. Falling of live or green trees is prohibited without a permit from the Administrator, Trust Land Management Division.

6. All buildings constructed must have a presentable and pleasing appearance. Tar paper or similar shoddy-appearing siding is not permitted.

7. Sewage disposal will be done in accordance with regulations issued by the Department of Environmental quality.

8. Open pits, ditches or other unsafe conditions must be eliminated.

9. Any site sub-leased, rented, or in any other way used to provide income to lessee must be done with approval in writing by the Administrator, Trust Land Management Division. Additional cabins, stores or any other use falls in this category. In such instances, the annual rate must be adjusted.

10. Disturbance of peace of the community will not be tolerated.

11. Forest litter (needles, twigs, duff) must be raked up for a distance of ten feet around all buildings for fire protection purposes.

12. No buildings except boat docks may be constructed within 100 feet of shoreline on rivers or lakes.

13. Only one dwelling will be permitted on each lot.

14. Rental for site must be paid one year in advance on or before March 1 of any year.

15. These rules must be posted in a conspicuous place on the leased site.

The above rules and regulations were approved by the State Board of Land Commissioners on May 13, 1959.

WARNING: Failure to comply with above rules and regulations may result in termination of lease.

Mrs. Harmon explained that she had provided the rules and regulations to the Board because she wanted to make the point that "there are so many rules and regulations that come with living on a leased lot. People that move out to the country aren't necessarily interested in that. It's just the very nature of it. Like having to take down a tree on the property. We have to ask the State for permission, and we have to pay for that tree, and then we have to get a letter back before we can even cut down a tree on the property. Private landowners don't do that. We can't have more than one dwelling on the property. We can't have livestock. And the big thing is, because the lease only goes to 100 feet back from the lake, that 100 feet is left open for public traversing and they can fish, they can even camp on it if they really wanted to. On private land that is not the case."

Page two of Taxpayers' Exhibit 1 is a map showing Rogers Lake lease lots, Section 30, T27N, R23W (source of map not identified); page three is a GPS map of Rogers Lake lots 25-36, dated July 28, 1999; and page four is a map of

Rogers Lake lease lots, lots 28-36 (source of map not identified). The GPS map (page three of Exhibit 1) shows the subject lot as .67 acre with 137.389 feet of lakefront footage, while the map on page four shows the property as .76 acre with 130 front feet. Mrs. Harmon testified that when she bought the property, she was told that it was .75 acre and "was shown kind of haphazardly where the property lines were." In 1999 the taxpayers planned to build a garage on the property so had the county visit the property to determine where the property lines were actually located. The taxpayers' neighbor disputed the newly-determined boundaries, because the water originally was on the neighbor's property, but the new boundary determination would have placed the water on the Harmons' property. Upon request by the taxpayers, a representative of the DNRC remeasured the property and again attempted to determine the property lines. The taxpayers have measured the property several times themselves, and they dispute the accuracy of the .67 acreage and several of the other lot measurements, including the 137 feet of front footage.

Pages five through thirteen of Exhibit 1 show private and leased properties on Rogers Lake that have recently sold or are for sale. Mrs. Harmon testified that she did not know of any private properties on the lake that were for sale

without houses, except for Plum Creek land. As shown on page seven of Exhibit 1, this land consists of 160 acres with 5,261 feet of shoreline, listed at $800,000, or $5,000 per acre. Private properties listed for sale on Rogers Lake included the following, as shown on pages five and six of Exhibit 1: The first property is a two-bedroom, two-bath home, 35 years old, across the lake from the Harmon property, on 1-1/3 acres with 200 feet of lake frontage; taxes are $1,456 per year; the property is listed at $235,000. The second property is a three-bedroom, two-bath home with 150 feet of lake frontage, listed at $345,000. The third property is a log home with a guest house on 18.31 acres with 150 feet of lake frontage, listed at $349,000. The final private property presented by the taxpayers is a log home with a guest house on 4-5 acres with 725 feet of waterfront, listed at $890,000.

Pages eight through thirteen of Exhibit 1 show leased properties on Rogers Lake that are for sale or were recently sold. Mrs. Harmon described each of these properties in detail, summarized as follows:

Lease #36 - .72 acre, no improvements; sold in 1994 for $10,000.

Lease #33 - .97 acre, 125 feet of lake frontage; sold for $15,000 after being on the market for a year, first listed at $19,900, then reduced to $17,500. Improvements consist of a small, unplumbed cabin valued by the county at $9,960, resulting in an extracted land value of $5,040.

Lease #32 - .83 acre, 91 feet of lake frontage; sold in March of 2000 for $15,000. Improvements consist of a small seasonal cabin with septic and water systems ready but not set up, value unknown.

Lease #26 - Acreage and lake frontage unknown; sold for $15,000 in 1999 after being on the market for 6 years, first listed at $35,000, reduced to $29,000, reduced again to $19,000. Improvements consist of furnished cabin, value unknown. Property is now on the market again.

Lease #24 - Acreage and lake frontage unknown; no improvements on property; listed at $12,000 and sold for $9,000 in 1999.

Lease #22 - Acreage unknown, 194 feet of lake frontage, no improvements on property; listed at $29,000; sold in 1999. Purchaser traded a vehicle in addition to a small amount of money for the property, estimated the value of the vehicle and money to be around $18,000.

Lease #21 - Acreage and lake frontage unknown, no improvements; property is currently listed for sale at $10,000.

Lease #19 or #20 - 1.55 acres, lake frontage unknown but it is "large;" property has been for sale for more than three years, originally listed at $39,900 and now reduced to $35,000. Improvements consist of a "rustic" get-away cabin. Because the property is not selling, owner intends to dismantle the cabin, move it to private property and again attempt to sell it, and will try to sell the lease separately.

Lease #15 - .8 acre, 138 feet of lake frontage; this is the only house for sale on the lake located on leased land. House has two bedrooms and two baths and is four or five years old. The property was listed at $134,500 and has been for sale for over two years; realtor had stated that many people had looked at it but were not interested because of its location on a leased lot.

Mrs. Harmon stated that the subject property is Lease #34, consisting of .67 acre with 137 feet of lake frontage. At the time she purchased it in 1994 for $45,000, it had a house, shed, septic system, well and shared water rights. The $45,000 included the right to the lease and the existing improvements on the property. She said that the rural land improvements were appraised by the county at $31,170, leaving a residual land value of $13,380. She believes that the land is worth $14,000 or $15,000, stating that "we do have a driveway and we have beautiful frontage and improvements on the property as far as landscaping and so forth. I would say that in some of these cases versus some of the other leases that have sold their rights to their

properties that were full of brush and so forth, we are cleaned up, and so I think it's worth a little bit more than some of these other leases." She testified that "at this point I don't know if I'd put it up for sale for $45,000, because no one seems to want to pay more than about $15,000 or $20,000 for a leased lot right now, even with a house on it, I guess probably because of this problem with not knowing what the leases are going to go to."

Mrs. Harmon concluded her testimony by stating, "I guess we're not here to dispute the beauty of this land. We think it's a beautiful place or we wouldn't live there. But we pay for that privilege. We pay about $1500 a year to live there, in addition to taxes on our property. And this is for property that we know any improvements to probably won't result in our getting our equity back. So, it's kind of a distressful thing. And to be charged for an appraisal as to what private land is, we just don't think is fair."

The taxpayers had filed an AB-26 form for property review with the DOR in Flathead County on September 16, 1999, but the appraisal was not adjusted as a result of this review.

DOR'S CONTENTIONS

DOR's Exhibit A consists of three photographs of the subject property: #1 is the front view, #2 is a side view

from the north, and #3 is the back yard and the contiguous lake. Exhibit B is a copy of a January 14, 1998 memorandum to the Flathead County appraisers from Jeanne Fairbanks, West Side Supervisor, Special Uses Management Bureau, DNRC. Mr. Anderson had highlighted the sections on pages one and two of the memorandum regarding the 100 foot setback. In pertinent part, this information follows:

> **All leases have a 100' setback from all bodies of water for placement of improvements other than docks or boathouses. This 100' strip also provides access for members of the public to enter state land bordering our subdivisions. The general recreational access law and rules further support this policy by categorically closing all cabin and home sites to the public for recreational uses. Therefore, the public cannot picnic, camp, fish, etc. within this 100' area. The Lessee is the only one to enjoy all rights to the water frontage associated with their lease.**

Following the reading of the above, Mr. Anderson showed the Board picture #3 of Exhibit A, pointing out that "you can see that there is the enjoyment of that 100 foot setback with a boat, a small boat dock, and a picnic table set up for the property owners. I just wanted to clarify that, although they technically do not own the lease to the 100 foot setback, they do enjoy the rights associated with using that 100 foot setback."

Exhibit C is a copy of the 1997 property record card for the subject property, showing the width of the property as 130 feet, the depth as 343 feet, and the value as $43,870. Mr. Anderson explained that there are several

techniques used to value land, including an acreage value, a square footage value, and a front foot value. Typically for waterfront properties, a front foot value is used. This is done by taking the actual amount of front footage that is available and an average for the depth. In the case of the subject property, the average depth was 343 feet. Mr. Anderson stated, "I realize that multiplying the width by the depth comes up with over an acre in size, and that is not the way that we are generating the value for this property. We're not using a square foot method; we're using a front foot method, which takes the front foot and a depth. So, the amount of acreage is actually just more for descriptive purposes. In fact, we had shown that the amount of acreage was .76. It was not until we were supplied with a map by the appellants that showed that there has been a new GPS map that came out that, in fact, reflects that the size is actually .67. We did take this information into consideration to correct our records as far as the descriptive code to change...the .76 to .67, but, also, looking at the information on this GPS map...you can determine that actually the front footage is 137 feet, whereas the department shows the front footage as 130; and the new depth comes out to 346 feet, where the department still shows 343. So, although the overall information

gathered from the GPS survey now shows that the descriptive code of .76 acres is in fact .67 acres, the actual width and depth changed for the greater. And so that's part of the reason why at this point the department did not change their value to reflect a higher value based on the greater front foot and depth."

Exhibit D is a copy of §15-8-111, MCA, stating that "All taxable property must be assessed at 100% of its market value except as otherwise provided." Mr. Anderson stated that "it is the DOR's responsibility to assess property at 100% of its market value, based on comparable properties, either within that area or within competing areas of the property."

Mr. Anderson explained that "in order to generate a price per front foot value for a specific property, the DOR uses sales of either comparable areas or properties that were of competing neighborhoods. In this case, we were aware that we don't have state lease land per se for sale, so we used comparable properties... to develop a CALP table. Basically what this does is allows us to look at the standard width and depth of properties and find out what they're selling for on a price either per square foot or per front foot basis... lake properties are typically assessed using a front foot basis. The CALP table that we used

indicated that a standard lot would be 100 feet by 300 feet, and as a unit base per front foot, the model we used generated a price of $315 per front foot." Mr. Anderson did not have the CALP table at the hearing, but it was provided as a post-hearing submission. In lieu of the CALP table, Mr. Anderson submitted Exhibit E, a two-page exhibit listing sales and their locations on a "generic map," explaining that he "threw out the high and the low of our CALP tables and used just kind of a generic handful of the sales." The comparable sales shown on this exhibit are summarized as follows:

Subject
Location: **Rogers Lake**
Assessed at: **$43,870**
Lot size: **130 x 343**
Price per f.f. **$337**

Comparable #1
Location: **Rogers Lake**
Sale price: **$30,000**
Sale date: **12/92**
Lot size: **82 x 176**
Price per f.f. **$365**

Comparable #2
Location: **Little Bitterroot Lake**
Sale price: **$36,889**
Sale date: **4/94**
Lot size: **82 x 285**
Price per f.f. **$450**

Comparable #3
Location: **Little Bitterroot Lake**
Sale price: **$42,500**
Sale date: **5/93**
Lot size: **100 x 255**
Price per f.f. **$425**

Comparable #4

Location:	**Ashley Lake**
Sale price:	**$35,000**
Sale date:	**6/93**
Lot size:	**100 x 250**
Price per f.f.	**$350**

Comparable #5

Location:	**Rogers Lake**
Sale price:	**$49,000**
Sale date:	**5/93**
Lot size:	**75 x 175**
Price per f.f.	**$653**

Mr. Anderson explained that in the comparable sales he presented, the price per front foot ranges from $350 to $653. He stated that "the subject lot is assessed at a price of $337 a front foot. Now the base price would be $315, but, due to the size, it's larger than the typical lot that we used to establish the base and it's deeper than the typical lot. So there is a depth factor of 1.07 that comes into play, and that establishes a price per front foot of $337." Mr. Anderson concluded his testimony by stating that he wanted to "point out that one of the issues addressed by the taxpayer was that one of the properties across the lake had paid about a similar amount of taxes... and many circumstances may come into play on such a situation. For instance, they may have what is called land cap or a phase-in value or even a low-income or property assistance, so it's not always fair to be able to try to compare the taxes."

Mr. Miller distributed Exhibit F, a three-page fact sheet that had been prepared by Jeanne Fairbanks, the cabin site lease program manager for the DNRC, explaining the history of the lease program and the various legislative changes in the lease fees. Mr. Miller testified that in 1983 the legislature set the lease fee values at 5% of the lease/license value of the property. The DNRC held statewide meetings with the lessees regarding the fee, and lessees protested that "it wasn't fair to pay 5% of the appraised value because these were leaseholds; it's not fee simple property; they don't own it; they don't have controlling rights; and they can't do whatever they please out there without getting permission from the state." Through negotiations, it was determined that the appraised value would be 70% of the 5%, resulting in the 3.5% presently being used, according to Mr. Miller. He further testified, "we devalued the property values basically by 30%. That was essentially set into law in 1989 by Senate Bill 226, passed by the legislature. The lease rate was set at 3.5% to account for the lease value, and so the law itself is factored to account for the fact that this is leased property." Mr. Miller explained that a private organization called Montrust last year filed suit against the DNRC, claiming that the 3.5% violates the law stating that the

department must get fair market value for their leases. Montrust prevailed in both District Court and the Supreme Court, so the 3.5% will ultimately be raised to a higher percentage. (***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***)

BOARD'S DISCUSSION

The post-hearing submission from the DOR consisted of the CALP (Computer Assisted Land Pricing) table for neighborhood 720, Roger's Lake lease lots. Seven sales were included in the table, with an average price per front foot of $315, based on a standard lot size of 100 feet by 300 feet. Because the subject lot is larger than the typical lot, the average price was adjusted by a depth factor of 107%, resulting in a price per front foot of $337 for the subject lot. The taxpayers' response to the DOR's submission stated that they had viewed the properties included on the table and wanted to point out that (1) None of the properties were state lease properties; and (2) The properties were on Bitterroot and Ashley Lakes, which are much larger and deeper than Rogers Lake, so they did not believe that an accurate value of Rogers Lake properties could be determined using those lakes. Mr. Anderson had

testified during the hearing that, because the DOR did not have state lease land sales, they "used comparable properties, either from surrounding lakes or even directly across the lake in order to develop the CALP table." The Board noted that despite the taxpayers' indicating that Rogers Lake "is not as desirable for boaters and fishermen" as Bitterroot and Ashley Lakes, the improved private properties listed for sale on page five of Taxpayers' Exhibit 1 ranged from $235,000 to $890,000. These prices are not time adjusted, nor do they indicate how much of the sale price is attributed to the land, but they do give some indication that properties on Rogers Lake are considered to be "desirable."

Page seven of Taxpayers' Exhibit 1 described Plum Creek land on Rogers Lake with 5,261 feet of shoreline, listed for sale at $800,000, or $152 per front foot, which is less than the front foot average price of the lots in the CALP table. If it sold at the listed price, however, this 160-acre parcel of land would likely be subdivided and improved, and the resulting lots would undoubtedly be listed at a much higher price than the $152 per front foot.

The taxpayers described several differences and inaccuracies in the various measurements of their property. Although the .76 acre was reduced to .67, the assessment was

not reduced; however, Mr. Anderson explained that the subject property was assessed on a front foot basis rather than an acreage basis, and the front footage actually was increased from 130 feet to 137 feet without an increase in the assessment.

The taxpayers emphasized that there should be differences in market value between private lots and state lease lots due to such factors as the rules and regulations that must be followed by persons living on leased lots and the 100 foot setbacks on leased lots that can be used by the public. They believe that the State should not appraise these lots in the same manner. 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..."

Mr. Miller had testified 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."

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 taxpayers had presented several examples of leased property on Rogers Lake that had sold, or were for sale at amounts considerably less than private properties that had sold or were listed for sale (Exhibit 1). During the hearing, Mr. Anderson had testified that "a property owner who has a lease can turn around and sell the rights to that

lease, whether it's an improvement that's associated with it or whether it's a vacant piece of property and **all they're selling is the rights to that lease**. This is the case in several listings that were provided by the appellant in Exhibit A, which concern vacant land. Page eight of Exhibit A concerns Lease #36, a sale for $10,000. What that is, is the rights associated to that lease, which would allow the buyer to own that lease and then be able to renew it after their fifteen-year term had expired. They also still are responsible for paying the amount that they are charged, based on 3.5% of the market value..." As Mr. Anderson had emphasized, the $10,000 sale price described above is **not** the market value of the property, but is payment for the right to use the lease.

Mr. Miller clarified "leasehold interest" by explaining that "the leasehold interest is simply the right that you have as a lessee to utilize those state lands according to the various rules and regulations that we have and the requirements in your lease." In using the taxpayers' property as an example, Mr. Miller explained that the taxpayers' stated value of $13,380 for the subject land, obtained by subtracting the DOR's improvement value of $31,170 from the taxpayers' purchase price of $45,000, is **not** the value of the land, but the value of the leasehold.

He testified that "It's customary for all of our leases that the people who enjoy the lease have something of value. They do not own the property, but the ability to use that property has an intrinsic value to it, and that's what we call the leasehold value. So, when these leases sell, it's customary for there to be a value for the improvements on the lease plus the value of the lease itself."

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 $315 per front foot for a 100 foot by 300 foot lot. The larger subject lot was adjusted by a 107% depth factor to a price of $337 per front foot. The Board is satisfied that the DOR has arrived at a valid indicator of market value for the subject lot.

The Board agrees that the taxpayers have a valid concern about potential buyers of leased properties worrying about future 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***), referred to in Mr. Miller's testimony, 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*) The examples presented by the taxpayers in Exhibit 1 indicated that private properties on Rogers Lake that had sold or were for sale are valued higher than comparable properties on leased lots, thus suggesting a

reduced value of improvements located on leased lots. However, in this appeal, as in the previously cited appeals, only the value of the land has been contested.

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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).

5. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1), MCA**, in assigning a market value to the subject property for lease fee purposes.

6. The appeal of the taxpayers is hereby denied and the decision of the Department of Revenue 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 entered on the tax rolls of Flathead County by the Assessor of that county at the value of $43,870 for the land as determined by the Department of Revenue. The appeal of the taxpayer is therefore denied.

Dated this _____ day of May, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

_____
GREGORY A. THORNQUIST, Chairman

_____
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 _____ day of May, 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:

Marilyn A. and Daniel E. Harmon
1755 Rogers Lake Rd.
Kila, MT 59920

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Department of Revenue
Mitchell Building
Helena, Montana 59620

Compliance, Valuation & Resolution
Department of Revenue
Flathead County, Region 1
P. O. Box 920
Kalispell, Montana 59903-0920

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DONNA EUBANK
Paralegal