

Office of Administrative Hearings
Department of Natural Resources and Conservation
1539 Eleventh Avenue
P.O. Box 201601
Helena, MT 59620-1601
Phone: (406) 444-6615
E-mail: DNRCOAH@mt.gov

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

KEVIN SCOTT HUNTER AND ANNA CRISTA HUNTER,)	
Petitioners,)	RECOMMENDATION OF MINIMUM
)	BID FOR THE SALE OF LOT 30
IN THE MATTER OF THE APPRAISED)	ECHO LAKE
VALUE OF STATE TRUST LANDS AND)	
THE IMPROVEMENTS THEREON.)	

Pursuant to its authority under §77-2-317, MCA (2019), the Department of Natural Resources and Conservation (hereinafter “Department”) conducted a hearing in this matter on February 2, 2021, to allow Kevin Scott Hunter and Anna Crista Hunter (“Petitioners”) the opportunity to contest the appraised value of the real property described as Lot 30 COS 18885, Section 5, T27N, R19W, PMM, Flathead County, Montana, commonly referred to as Lot 30 Echo Lake (hereinafter “Lot 30”). I am the Administrative Law Judge (“ALJ”) who was assigned by the Department to conduct the informal hearing pursuant to §2-4-604, MCA (2019).

APPEARANCES

Petitioners appeared *pro se*. The Department was represented at the hearing by Cameron Boster and Molly Kelly, Attorneys for the Department.

EXHIBITS

The Department offered and I admitted into the record the following exhibits:

- 1) Appraisal Report of Lots 3, 5, 17, 30, 31, 42, 44, & 45 of COS # 18885 Bigfork, Flathead County, Montana, prepared by Clark Real Estate Appraisal (hereinafter “Appraisal” or “S1”); and
- 2) Appraisal Review Report, prepared by Renee Kelley, DNRC Real Estate Sales Specialist.

Petitioners offered and I admitted into the record the following exhibits:

- 1) A document entitled “Echo Lake Lot 30 Appraisal Report Comments Kevin Hunter Jan 18” (hereinafter “P1”); and
- 2) A corrected fifth page to the prior exhibit submitted by Petitioners on January 26, 2021.

LEGAL BACKGROUND

The Montana Constitution specifies that the State must manage state school trust lands for the sole financial benefit of the institutional trust beneficiaries. Act of February 22, 1889, Ch. 180, 25 Stat. 676 (1889); Mont. Const. Art. X §§ 4 and 11. The authority exercised by the State with regard to school trust lands constitutes a “duty of undivided loyalty” on the part of the State to the beneficiaries of the trust. Montanans for Responsible Use of School Trust v. Board of Land Commissioners, 1999 MT 263, ¶41, 296 Mont. 402, 989 P.2d 800.

Art. X, Sec. 4, of the Montana Constitution gives the Land Board “the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulation and restrictions as may be provided by law.” Article X, Section 11 of the Montana Constitution states that “[n]o such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.”

Prior to selling a cabin site, § 77-2-317, MCA (2015), directs the Land Board to separately determine the full market value of the land and the value of the cabin site improvements existing on the land and that “[t]he appraisal to determine these values must be based on comparable sales of nearby existing properties with the hypothetical condition that the state parcel to be sold is accessible for all lawful purposes. The appraisal must determine the raw undeveloped value of the parcel and the value of the cabin site improvements.”

An “[a]ppraisal’ means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) as developed by the appraisal foundation.” § 37-54-102(1), MCA (2013). The appraisal must use the following definition found at § 70-30-313, MCA (2013) for current fair market value:

70-3-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to the following factors:

- (1) the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;
- (2) the machinery, equipment, and fixtures forming part of the real estate taken; and
- (3) any other relevant factors as to which evidence is offered.

Under the cabin site sales program, by rule the appraisal must “include a total value of the property” and “[t]he value of state-owned land added to the non-state-owned improvements value will not be greater than the total value of the property”. ARM 36.25.705(15)(b)(iii). If a lessee appeals the valuation(s) made in the appraisal, “[t]he lessee or owner of improvements shall present evidence and arguments it wishes the department to consider in recommending values of land and improvements to the board.” ARM 36.25.705(16)(a). The Department then “shall present its findings, conclusions, and recommended values of land and improvements to the board and the lessee or improvements owner.” Finally, “[u]pon receiving the appraisal values or department’s recommendation of values, the board shall set a minimum acceptable bid on the real

property comprising the cabin site or home site, and determine the improvement value for compensation to the lessee or improvement owner.” ARM 36.25.705(17) and (18).

FINDING OF FACT

1. The subject Sale 1107 is a State-owned leased parcel described as:

SALE NO. 1107 – LOT 30, ECHO LAKE, SECTION 5, TOWNSHIP 27 NORTH,
RANGE 19 WEST, FLATHEAD COUNTY, STATE OF MONTANA

2. Petitioners are the current lessees of Lot 30 and own the improvements on that parcel.

Petitioners nominated Lot 30 for participation in the cabin site sales program.

3. The value being contested is the cabin site underlying land.¹

4. The Department’s value for the site is \$387,000. This value was established by Clark Real Estate Appraisal, Elliott M. Clark, with a date of value of August 5, 2020.

5. The Appraisal determined a value for Lot 30 using the Sales Comparison Approach:

The Sales Comparison Approach is developed to determine the value of each subject site as if vacant. This is typically the most reliable approach for determining the values of vacant sites. (S1 at 72.)

See also Hearing Recording at 28:32-28:43.²

6. To implement the Sales Comparison Approach, the Appraisal identified five properties on small lakes in Flathead County that were deemed appropriately comparable. The Appraisal explained that there were insufficient applicable sales of properties abutting Echo Lake to draw suitable comparisons exclusively by reference to Echo Lake data. S1 at 67, 73. *See also* Hearing Recording at 29:54-31:12; 35:16-35:48. In determining how to apply the value of those five land sales to determine the value of Lot 30 (and the four other lots that were appraised in the same document), the Appraisal focused most heavily on the metric of cost per foot of lakeshore frontage. *See* Hearing Recording at 32:22-32:34. After making various adjustments to account for differences in the characteristics of the comparable sales properties

¹ Petitioners do not contest the appraised value of the improvements on Lot 30, which were determined by the Appraisal to be worth \$138,000. S1 at 105.

² All time references are to the location of testimony in the Zoom recording of the Hearing on file with the OAH.

in relation to Lot 30, the Appraisal identified the sales price per foot of frontage for the five comparable land sales as follows:

Land Sale 1	\$2,779
Land Sale 2	\$3,010
Land Sale 3	\$3,696
Land Sale 4	\$2,073
Land Sale 5	\$1,641

S1 at 100, 102.

7. Of those five land sales, the Appraisal found two (“Land Sale 2” and “Land Sale 4”) to be most applicable to Lot 30, due to their similar amount of lakeshore front footage. Of those two, the Appraisal determined that Land Sale 2 had the most analogous amount of lakeshore front footage to Lot 30, and therefore gave the Land Sale 2 valuation $\frac{3}{4}$ of the weight – and the Land Sale 4 valuation $\frac{1}{4}$ of the weight – in arriving at the value for Lot 30. S1 at 102; *see also* Hearing Recording at 36:28-36:53. This resulted in a rounded per frontage foot value of \$2,776. $[(\$3,010 \times .75) + (\$2,073 \times .25) = \$2,775.75.]$ Lot 30 has 139.55 feet of lakeshore frontage, which results in a value of \$387,391, which the Appraisal rounded down to \$387,000. S1 at 102.

8. Although Petitioners have not proposed a specific alternate value for Lot 30, they contend that Land Sale 4 is the most applicable comparison, and that the Appraisal’s heavy weighting of Land Sale 2 inappropriately skews the value of Lot 30 upward. Specifically, Petitioners view Land Sale 2’s topography and road access as superior to that of Lot 30, while Land Sale 4 is shaped much more like Lot 30 in terms of being long and rectangular, and has more comparable

access from an unpaved road. Hearing Recording at 7:35-9:32 and 11:02-11:29; *see also* P1 at 1-2.

9. Petitioners further assert it would have been more appropriate to value Lot 30 akin to what was done for the lot adjacent to theirs (“Lot 31”), which was also valued in the Appraisal. The Appraisal determined a per frontage foot value for Lot 31 of \$1,785/frontage foot, significantly lower than the \$2,776/frontage foot value the Appraisal assigned to Lot 30. Hearing Recording at 9:33-10:31.
10. The Appraisal reached the valuation for Lot 31 by assigning 1/3 of the weight to Land Sale 4 and 2/3 of the weight to Land Sale 5, the latter being a property which the Appraisal did not deem reasonably comparable to Lot 30 because of its lesser amount of lakeshore front footage. *See* S1 at 102, 108; *see also* Hearing Recording at 46:42-46:56.
11. Petitioners also noted that another lot near Lot 30 (“Lot 42”), which was also evaluated in the Appraisal, and which similarly received a lower value by assigning 1/3 of the weight to Land Sale 4 and 2/3 of the weight to Land Sale 5, for a per frontage foot amount of \$1,929. Hearing Recording at 10:30-10:58; S1 at 108. Petitioners contend that the value assigned to Lot 30 is therefore disproportionate and unreasonable. Hearing Recording at 10:59-11:17.
12. Appraiser Elliot M. (Ellie) Clark testified on behalf of the Department. Ms. Clark testified that the most appropriate valuation metric for comparing the value of the properties is the price per foot of lakefront abutting land. Hearing Recording at 32:22-32:42. Ms. Clark explained that she placed much less weight on the size of the respective lots in assessing their value and that, therefore, the parcel characteristics identified by Petitioners as having led to an improperly high valuation in fact did not meaningfully figure into her analysis of Lot 30’s value. Hearing Recording at 32:53-33:31.

13. Ms. Clark further explained that she valued Lot 30 differently than Lots 31 and 42, relying heavily on Land Sale 2 for Lot 30 but not Lots 31 and 42, because of the different characteristics of the three Lots, particularly related to the size and quality of their respective lakefront footage. Hearing Recording at 41:11-41:32; 44:48-45:13; 45:45-46:22. *See also* S1 at 106, 108 (Lot 31). Hearing Recording at 48:14-48:42; 49:14-49:50. *See also* S1 at 112, 114 (Lot 42).

CONCLUSIONS OF LAW

14. Every parcel of real property is unique and thus it would be impossible to find comparable properties that exactly replicate the site characteristics of Lot 30. To reach a conclusion of the value of the raw land Appraiser Clark used her best professional judgement to identify suitable comparable properties and adjusted the sales prices to reflect the variations of Lot 30's specific site characteristics. The Appraisal document and Appraiser Clark explain that the five comparable properties were chosen because they had site characteristics similar to Lot 30.

15. Petitioner's arguments regarding the valuation of the land were adequately addressed in the Appraisal and/or by Appraiser Clark's testimony. Petitioners submitted no contradictory opinion from a licensed appraiser.

16. I have reviewed the Appraisal and the Petitioners' testimony and exhibits and conclude that the Appraisal's valuation of \$387,000 is a reasonable, unbiased estimate of the current fair market value of the land comprising Lot 30, as defined in §70-30-313, MCA (2019).

RECOMMENDATION OF VALUE

Based on the preceding Findings of Facts and Conclusions of Law, I hereby recommend that the Land Board set the minimum bid for public sale of Lot 30 at \$387,000 for the land and a value of the improvements at \$138,000, for a total value of \$525,000.

Dated this 3rd day of March 2021.

/Original signed by Jay D. Weiner/

Jay D. Weiner, Administrative Law Judge
Department of Natural Resources
and Conservation
Office of Administrative Hearings
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-1510

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March 2021 a true and correct copy of the foregoing document was served upon the following individuals in the manner set forth below:

PETITIONER(S): ANNA CRISTA AND KEVIN SCOTT HUNTER 81024 378 AVE E OKOTOKS, AB T1S0E8	<input type="checkbox"/> U.S. First-class mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> Via Email: kevin.anna.hunter@gmail.com
ATTORNEY FOR THE DEPARTMENT: CAMERON BOSTER MOLLY KELLY DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION 1539 ELEVENTH AVENUE P.O. BOX 201601 HELENA, MT 59620-1601	<input type="checkbox"/> U.S. First-class mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> Via Email: Cameron.Boster@mt.gov Molly.Kelly2@mt.gov Cc: <input checked="" type="checkbox"/> Via Email: AStrong@mt.gov
REAL ESTATE BUREAU REPRESENTATIVE: DEIDRA KLOBERDANZ DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION 1539 ELEVENTH AVENUE P.O. BOX 201601 HELENA, MT 59620-1601	<input type="checkbox"/> U.S. First-class mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Fax: <input checked="" type="checkbox"/> Via Email: Deidra.Kloberdanz@mt.gov

/Original signed by Jamie Price/

Jamie Price, OAH Hearings Assistant
(406) 444-6615; jsprice@mt.gov