

1 Department of Natural Resources
 2 Bureau of Real Estate Management
 3 Adopted Permanent Rules Governing Lakeshore Lease Rules

4 6122.0100 SCOPE.

5 Parts 6122.0100 to 6122.0400 provide methods for appraising
 6 state lands adjacent to public waters that are leased under
 7 Minnesota Statutes, section 92.46, and procedures for a lessee
 8 to challenge the appraised value of the lands. ~~Since Minnesota~~
 9 ~~Statutes, section 92.46, subdivision 1, paragraph (b), provides~~
 10 ~~that the annual lease fee shall be five percent of the appraised~~
 11 ~~value of the leased lands, a successful challenge to the~~
 12 ~~appraised value of leased lands will affect the annual rent.~~
 13 ~~Over 90 percent of the leases issued under Minnesota Statutes,~~
 14 ~~section 92.46, are on lands granted to the state by the United~~
 15 ~~States for public purposes, commonly known as "school trust~~
 16 ~~lands," which must be managed in recognition of the requirements~~
 17 ~~of Minnesota Constitution, article II, section 1, and article~~
 18 ~~XI, section 8, and Minnesota Statutes, section 124.079.~~

19 6122.0200 DEFINITIONS.

20 Subpart 1. **Scope.** The terms used in parts 6122.0100 to
 21 6122.0400 have the meanings given them in this part.

22 Subp. 2. **Appraised value.** "Appraised value" means the
 23 market value, as defined in subpart 11.

24 Subp. 3. **Commissioner.** "Commissioner" means the
 25 commissioner of natural resources of the state of Minnesota or
 26 the commissioner's designated representative.

27 Subp. 4. **Department.** "Department" means the Minnesota
 28 Department of Natural Resources.

29 Subp. 5. **Fee simple estate.** "Fee simple estate" means
 30 absolute ownership unencumbered by any other interest or estate
 31 subject only to the four powers of government (eminent domain,
 32 escheat, police power, and taxation).

33 Subp. 6. **Highest and best use.** "Highest and best use"
 34 means the reasonably probable and legal use of vacant land or an
 35 improved property. Criteria the highest and best use must meet

1 are legal permissibility, physical possibility, financial
2 feasibility, and maximum profitability.

3 Subp. 7. Improvements on a leased lot. "Improvements on a
4 leased lot" means any structures or things erected or
5 constructed on a lot for its utilization including, but not
6 limited to, buildings, fences, driveways, retaining walls,
7 wells, and septic systems.

8 Subp. 8. Improvements to a leased lot. "Improvements to a
9 leased lot" means additions to the property to make it usable,
10 including, but not limited to, curbs, drains, excavations, and
11 fills.

12 Subp. 9. Lease. "Lease" means a written document between
13 a property owner as lessor and a lessee, by which the specified
14 rights of use and occupancy of land are transferred by the owner
15 to the lessee for a defined period of time in return for the
16 lessee's payment of the lease fee and promise to abide by the
17 terms and conditions of the lease. Lessor, for purpose of these
18 rules, is the state of Minnesota acting by and through its
19 commissioner of natural resources.

20 Subp. 10. Lease fee. "Lease fee" means the annual rental
21 charge the lessee must pay the lessor under the terms specified
22 in the lease.

23 Subp. 11. Market value. "Market value" also referred to
24 as "appraised value" means the most probable price which a
25 property should bring in a competitive and open market under all
26 conditions requisite to a fair sale, between a prudent and
27 knowledgeable buyer and seller, and assuming the price is not
28 affected by undue stimulus. Market value is shown by the
29 consummation of a sale as of a specified date and the passing of
30 title from seller to buyer under conditions whereby:

31 A. buyer and seller are typically motivated;

32 B. both parties are well informed or well advised,
33 and acting in what they consider their best interests;

34 C. a reasonable time is allowed for exposure in the
35 open market;

36 D. payment is made in terms of cash in United States

1 dollars or in terms of financial arrangements comparable
2 thereto; and

3 E. the price represents the normal consideration for
4 the property sold unaffected by special or creative financing or
5 sales concessions granted by anyone associated with the sale.

6 Subp. 12. **Mass appraisal.** "Mass appraisal" means the
7 process of valuing a universe of leased lots as of a given date
8 utilizing standard methodology, employing common data, and
9 allowing for statistical testing.

10 Subp. 13. **Minnesota Department of Revenue annual**
11 **assessment data.** "Minnesota Department of Revenue annual
12 assessment data" means the State Board of Equalization Summary
13 of Board Orders (1994 Edition and subsequent editions) compiled
14 by the Department of Revenue and issued through the property tax
15 division of the department, containing data collected on sales
16 of various land classifications from each county in the state.
17 The annual assessment data are incorporated by reference. The
18 annual assessment data are subject to frequent change, and are
19 available through the Minitex interlibrary loan system.

20 Subp. 14. **Subject lot.** "Subject lot" means the leased lot
21 whose appraised value is being determined.

22 Subp. 15. **Uniform Standards.** "Uniform Standards" means
23 the Uniform Standards of Professional Appraisal Practice (1993
24 Edition and subsequent amendments) adopted by the Appraisal
25 Standards Board of the Appraisal Foundation, which provide
26 guidelines for the development of appraisal reports. The
27 Uniform Standards are incorporated by reference. The Uniform
28 Standards are subject to frequent change, and are available
29 through the Minitex interlibrary loan system.

30 6122.0300 METHOD OF DETERMINING A LOT'S APPRAISED VALUE.

31 Subpart 1. **Estimated market value.** As the basis for a
32 lease fee the commissioner shall determine an estimate of market
33 value of the fee simple estate, subject to encumbrances of
34 record, for each leased lot. Market value estimates will not
35 include improvements on the leased lot, but will include

1 improvements to a leased lot.

2 Subp. 2. Appraiser and reviewer appraisers standards. All
3 appraisals and appraisal reviews of leased lots shall be
4 conducted by appraisers licensed under Minnesota Statutes,
5 chapter 82B, or successor statutes. An appraiser must have
6 obtained at least a classification 2 appraisal license. A
7 review appraiser must have obtained at least a classification 3
8 appraisal license. Appraisers and review appraisers shall
9 follow the standards contained in the most current edition of
10 the Uniform Standards when performing appraisals and appraisal
11 reviews of leased lots.

12 Subp. 3. Frequency of adjustments; phase-in of increased
13 fees. The commissioner shall determine the appraised value for
14 each leased lot as of January 1, 1991. The lease fees shall be
15 based on the appraised value of leased land as determined by the
16 commissioner, and shall be adjusted by the commissioner at the
17 fifth, tenth, and 15th anniversary of the lease if the appraised
18 value has increased or decreased.

19 The lease fees established by parts 6122.0100 to 6122.0400
20 shall be effective for lease periods after the effective date of
21 parts 6122.0100 to 6122.0400. Any increased fee shall be phased
22 in by three equal annual increments as provided by Minnesota
23 Statutes, section 92.46, subdivision 3.

24 Subp. 4. Adjustment of appraised value of leased lots.
25 Without reappraisal, the commissioner may determine a subject
26 lot's appraised value by adjusting the last appraised value of
27 the subject lot for time. This adjustment shall be:

28 A. based upon the Minnesota Department of Revenue
29 annual assessment data for property of the same highest and best
30 use within the same or adjacent county as the subject lot; and

31 B. made in an amount equal to the percentage change
32 in assessed market value between the dates of the last appraisal
33 or adjustment and the current adjustment, based on the most
34 recent Minnesota Department of Revenue annual assessment data
35 available.

36 Subp. 5. Appraisal of leased lots. The commissioner shall

1 determine when the appraised value of the leased lots shall be
2 based on new appraisals. The commissioner's decision to
3 appraise will depend on staffing, the degree of fluctuation in
4 real estate values in certain areas of the state, and fiscal
5 constraints.

6 Subp. 6. Method of appraisal. The commissioner shall
7 determine the appropriate method to use to appraise the leased
8 lots.

9 Subp. 7. Mass appraisal of leased lots. The commissioner
10 shall use mass appraisal of leased lots rather than individual
11 leased lot appraisals, whenever practicable. Mass appraisals
12 will be developed and reported by an appraiser in compliance
13 with the Uniform Standards.

14 Subp. 8. Single leased lot appraisal. Any leased lot may
15 be appraised individually when the commissioner has sufficient
16 reason to believe the expense of single leased lot appraisals
17 are warranted, or the mass appraisal method is not applicable.
18 All single leased lot appraisals shall be developed and reported
19 by an appraiser in compliance with the Uniform Standards.

20 Subp. 9. Lots previously appraised. The commissioner may
21 rely on the appraised value of leased lots appraised pursuant to
22 Minnesota Statutes, section 92.67, for the lakeshore sales
23 program, during the years 1988 through 1993. Whenever feasible,
24 the commissioner may assign the appraised value of a sale lot to
25 similar leased lots located in the same plat, or on the same
26 lake as the sale lot.

27 Subp. 10. Minimum appraised value. The minimum appraised
28 value of leased lots must be substantially equal to the county
29 assessor's estimated market value of similar land adjusted by
30 the assessment/sales ratio as determined by the Minnesota
31 Department of Revenue.

32 6122.0400 APPEALS.

33 Subpart 1. Right to appeal. A lessee may appeal the
34 appraised value of a leased lot when the lessee has good cause
35 to believe the value is in error. Requests for appeal must be

1 signed by all parties to the lease, other than the commissioner,
2 and all parties having a property interest in the improvement on
3 the lease, including contract vendors and vendees. Any appeal
4 must follow the applicable steps stated in this part. A lessee
5 must pay the annual lease fee while the appeal is being
6 decided. If the appeal results in a lower lease fee than paid,
7 the department shall issue a credit to the lessee's account in
8 an amount not to exceed the current year's rent and the
9 department shall issue a refund for any balances.

10 The lessee shall have 45 calendar days from the date of
11 mailing of notification of a lease fee adjustment to appeal the
12 valuation. Appeals of the decisions made under Steps 1 or 2
13 must be made within 45 days following mailing of notification of
14 the decisions under Steps 1 or 2. Failure on the part of the
15 lessee to notify the commissioner in writing of the intent to
16 appeal each decision within the referenced time frames shall be
17 deemed consent for the commissioner to proceed with that
18 decision.

19 Subp. 2. Step 1 of appeal. If the lessee does not agree
20 with the commissioner's appraised value of the leased lot, the
21 lessee shall submit a written appeal to the Department of
22 Natural Resources, Bureau of Real Estate Management, Box 30, 500
23 Lafayette Road, St. Paul, MN 55155-4030, for a review of the
24 appraised value of a leased lot. The lessee must submit factual
25 documentation to support a request for a review of the appraised
26 value of the leased lot. Documentation to support the lessee's
27 appeal may consist of recent comparable sales data, an appraisal
28 report performed by an appraiser licensed by Minnesota, who has
29 obtained at least a classification 2 appraisal license, or other
30 market evidence. If a lessee will be submitting an appraisal in
31 Step 1, the lessee shall have 45 calendar days from the date of
32 notification of a lease fee adjustment to submit an appraisal.
33 The lessee will be responsible for payment of the appraiser.
34 The commissioner may request assistance from sources outside the
35 department, such as state agencies, county officials, or real
36 estate professionals, to review and recommend action. The

1 commissioner shall recommend resolution for each appeal on the
2 basis of information made available by the lessee, department
3 staff, and any other sources. The commissioner must review a
4 lessee's appeal and send a decision to the lessee within 60
5 calendar days of receiving the lessee's appeal or send notice of
6 a delay which provides an estimate of when the decision will be
7 mailed.

8 If, in the opinion of the commissioner, sufficient evidence
9 is provided by the lessee to adjust the appraised value, the
10 commissioner shall set the amount of the adjustment based on the
11 lessee's information. If insufficient evidence is provided by
12 the lessee, the commissioner must deny the appeal and provide an
13 explanation of the denial. If the lessee does not agree with
14 the commissioner's decision in Step 1, the lessee may go to Step
15 2 of the appeal. If the lessee provided an appraisal in Step 1,
16 the commissioner denied the appeal, and the lessee does not
17 agree with the decision in Step 1, the lessee may proceed
18 directly to Step 3. The commissioner shall return a lessee's
19 appraisal subsequent to each decision.

20 Subp. 3.. Step 2 of appeal. If the lessee does not agree
21 with the decision in Step 1, the lessee must submit a written
22 appeal within the time period described in subpart 1 to the
23 commissioner stating the reason for disagreement or objection to
24 the appraised value. The lessee shall have 45 calendar days
25 from the date of the commissioner's decision in Step 1 to
26 provide an appraisal of the leased lot to the commissioner,
27 supporting the lessee's appeal. The appraisal must be prepared
28 by an appraiser licensed in Minnesota, who has obtained at least
29 a classification 2 appraisal license. The lessee will be
30 responsible for payment of the appraiser. The commissioner may
31 request assistance from sources outside the department, such as
32 state agencies, county officials, or real estate professionals,
33 to review and recommend action. The commissioner shall
34 recommend resolution on the basis of information made available
35 by the lessee, department staff, and any other sources. Within
36 60 calendar days of the commissioner receiving the lessee's

1 appeal appraisal, the lessee must be notified of the
2 commissioner's decision or be given a notice of delay which
3 provides an estimate of when the decision will be mailed.

4 Subp. 4. Step 3 of appeal. If the lessee does not agree
5 with the decision in Step 2, or Step 1 if an appraisal was
6 previously submitted, the lessee must submit a written appeal to
7 the commissioner stating a desire to go to binding arbitration.
8 The commissioner must receive the lessee's written appeal within
9 30 calendar days of the lessee receiving the commissioner's
10 decision in Step 2, or Step 1 if an appraisal was previously
11 submitted. Once the commissioner receives the lessee's written
12 appeal, the commissioner and the lessee shall have 15 days to
13 discuss whether or not to hold an arbitration hearing. If the
14 lessee does not express a preference, the arbitration will
15 proceed without a hearing.

16 A. The lessee shall be responsible for paying 50
17 percent of the cost of arbitration. The lessee must submit \$500
18 with the appeal in a cashier's check or certified check as a
19 down payment to pay for the lessee's share of the cost of
20 arbitration. Any part of the down payment not used shall be
21 refunded. Any cost in excess of the down payment will be billed
22 and the lessee shall be liable for paying that bill within 30
23 calendar days of receipt. If the amount due remains unpaid
24 beyond 30 days, it shall accrue interest at the maximum rate
25 permitted by Minnesota Statutes, section 334.01, subdivision 1,
26 from the date of billing and shall be added to the lease fee.
27 If the amount due remains unpaid when the next lease payment is
28 due, it shall be grounds for canceling the lease.

29 B. The commissioner and the lessee must mutually
30 agree on an arbitrator who shall be selected from a list of
31 professional appraisers provided to the lessee by the
32 commissioner within 15 days of the commissioner and the lessee
33 deciding whether to waive or hold an arbitration hearing. An
34 arbitrator shall be a professional appraiser licensed in
35 Minnesota, who has obtained at least a classification 3
36 appraisal license. If the lessee fails to select an arbitrator

1 within the specified time, the commissioner shall select an
2 arbitrator. Within 15 days of selecting the arbitrator, the
3 commissioner shall give written notice to the arbitrator of
4 intent of the commissioner and the lessee to resolve the dispute
5 by binding arbitration. The notice shall set forth the nature
6 of the dispute and the remedy sought. If the arbitrator
7 selected is unable to serve, the process will be repeated.

8 C. If the commissioner and the lessee agree to waive
9 an arbitration hearing, the commissioner and the lessee must
10 each submit an appraisal to the arbitrator within 15 calendar
11 days after the commissioner's notice to the arbitrator. The
12 arbitrator shall reach a decision based on a review of the
13 commissioner's and the lessee's appraisals. The arbitrator
14 shall have 30 calendar days to review both appraisals and issue
15 findings. The commissioner and the lessee must mutually agree
16 upon an extension of time if requested by the arbitrator, at
17 which time the arbitrator will be given no more than five
18 working days to reach a decision and submit the findings to the
19 commissioner and the lessee. The arbitrator's decision is final
20 and binding on the commissioner and the lessee and there shall
21 be no further appeals. The arbitrator shall return the
22 commissioner's and the lessee's appraisals with the final
23 decision.

24 D. If the commissioner and the lessee agree to hold
25 an arbitration hearing, the commissioner, after consulting with
26 the lessee and the arbitrator, shall set a date, time, and place
27 for the hearing and send notice of the hearing to the lessee and
28 the arbitrator. The commissioner and the lessee must each
29 submit an appraisal to the arbitrator 30 days prior to the
30 hearing. The hearing shall be limited to three hours, unless
31 the parties agree on an extension of time. The hearing
32 procedures are as outlined in subitems (1) to (9).

33 (1) The commissioner and the lessee may be
34 represented by counsel or other authorized representative. A
35 party intending to be so represented shall notify the other
36 party and the arbitrator of the name and address of the

1 representative at least ten days prior to the date set for the
2 hearing at which that person is to appear.

3 (2) Stenographic records, recordings, videotapes,
4 transcriptions, and all other forms of record keeping will not
5 be allowed at the hearing. The arbitrator's findings shall be
6 the official record of the hearing.

7 (3) The arbitrator shall maintain the privacy of
8 the hearing. Any person having a direct interest in the
9 arbitration is entitled to attend the hearing. The arbitrator
10 shall otherwise have the power to require the exclusion of any
11 witness, other than a party or other essential person, during
12 the testimony of any other witness. It shall be discretionary
13 with the arbitrator to determine the propriety of the attendance
14 of any other person.

15 (4) The arbitrator shall have the power to
16 cross-examine any witness submitting evidence at the hearing.

17 (5) The arbitrator for good cause shown may
18 postpone any hearing upon the request of the commissioner or the
19 lessee.

20 (6) The hearing procedure shall be established at
21 the discretion of the arbitrator, but the arbitrator shall
22 afford a full and equal opportunity to the commissioner and the
23 lessee for the presentation of any material and relevant
24 evidence.

25 (7) The arbitrator may proceed in the absence of
26 the commissioner or the lessee or any representative who, after
27 due notice, fails to be present or fails to obtain a
28 postponement.

29 (8) Any expenses of witnesses for either side
30 shall be paid by the party producing such witnesses. Any party
31 wishing an interpreter shall make all arrangements directly with
32 an interpreter and shall assume the costs of the service. All
33 other reasonable expenses of the arbitrator including required
34 travel shall be borne equally by the commissioner and the
35 lessee, unless they agree otherwise.

36 (9) The arbitrator's findings must be submitted

1 in writing to the commissioner and the lessee within 15 calendar
2 days of the closing of the hearing. The arbitrator's decision
3 shall be final and binding on the commissioner and the lessee.