United States Department of Agriculture | **Forest Service** | **Northern Region** | **200 E. Broadway P.O. Box 7669 Missoula, MT 59807**

File Code: 1570 (251-1)
#00-01-00-0032

Date: January 22, 2001

Ray and Patricia Capp
211 Linden
Anaconda, MT 59711

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. and Mrs. Capp:

This letter is my review decision of your Notice of Appeal (NOA) of the Forest Service decision to implement a new Recreation Fee Schedule for your recreation residence lot, Tract C, Lot #6, located at Georgetown Lake on the Beaverhead-Deerlodge National Forest. The recent appraisal and the annual rental fee based on that appraisal are at issue. You were notified of your right to administrative review (appeal) and your responsibilities in filing that appeal in the letter dated January 24, 2000, that accompanied your Bill for Collection.

My review was conducted pursuant to, and in accordance with, 36 CFR 251, subpart C. My responsibility as Reviewing Officer is to ensure the analysis and decision are in compliance with applicable laws, regulation and policy. Information that was acquired during oral presentations held in Butte on October 16 and 17, 2000, is included in the appeal record. This review decision hereby incorporates by reference the entire administrative appeal record.

I. SUMMARY

On March 2, 2000, I notified you that several appeals were being consolidated pursuant to 36 CFR 251.95(b) because of significant similarities in their issues. The issues for the following appellants are consolidated and discussed below.

Appeal Number	**Appellant(s)**
#00-01-00-0021	Michael F. McMahon
#00-01-00-0022	John M. Chor
#00-01-00-0024	William Morley
#00-01-00-0025	John W. Lillberg
#00-01-00-0026	Kirk R. and Joanne E. Wells
#00-01-00-0027	E. G. Leipheimer
#00-01-00-0028	Linda Lombardi
#00-01-00-0029	David A. Micheletti
#00-01-00-0030	Ralph and Kay Warnstrom
#00-01-00-0031	Richard R. and Christine Carnevale

#00-01-00-0032	**Ray and Patricia Capp**
#00-01-00-0033	James M. Miller
#00-01-00-0034	Nanci Taylor
#00-01-00-0035	Bonnie and John Powell (Echo Lake)

Beaverhead-Deerlodge National Forest Supervisor, Janette Kaiser, succinctly summarized the history of the appraisal process, as it pertains to your appeal, in her Responsive Statement dated July 11, 2000. I will reference this document throughout my review. In addition to the record she had available at that time, I am incorporating information I received during the oral presentations. This information completed the appeal record, and I closed the record on October 19, 2000.

II. OVERVIEW OF ISSUES AND RELIEF REQUESTED

The following issue, identified from your Notice of Appeal, is consistent in all the above appeals. "I am affected by the decision because it (appraisal) does not reflect a true and correct assessment of the appraised fee simple value of the lot I occupy near Georgetown Lake. The fee increase simply does not represent the fair market value of the rights and privileges authorized to me under my special use permit."

Appellants' similar contentions under this issue are:

1. The fair market values of appellants' lots are as determined by appraiser Tom Stuckey, MAI, RM, State of Montana General Certification No. 70 (Appellants' appraiser).
2. The lots are undevelopable. The Forest Service appraiser ignored state and county zoning laws relative to the development of property for parcels under one and two acres in size. Consequently, the second issue raised by this appeal is whether my lot is developable or undevelopable property and the effect thereof on its fair market value.
3. The Forest Service appraiser identified the lots as having lake frontage, which they do not.
4. Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts while ignoring similar or more compelling evidence on my permitted properties. The fair market value of typical lot E (Murto) was reduced because of the size of the lot.
5. There is a correlation between the size of the property and the value of the property.
6. The appellants' appraiser was correct in using a valuation date more current than the Forest Service appraiser used.

The relief requested is to reduce the fair market value of the affected recreation residence lots to those values for respective typical lots presented in Mr. Stuckey's appraisal dated November 30, 1999.

III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, including the concerns raised in your Notice of Appeal, the notes from the appeal resolution meeting of March 20, 2000, the Forest Supervisor's

Responsive Statement, and my notes and filed exhibits from the oral presentations on October 16 and 17, 2000. I wish to commend you on the level of interest you have demonstrated, energy

and financial resources you have expended, and genuineness with which you have expressed your concerns.

However, the Forest Supervisor and her staff have also dedicated considerable time and energy attempting to resolve your appeals. I agree with the Forest Supervisor's resolution process and the analysis and discussion in her Responsive Statement, and I will not reiterate those arguments here.

During the oral presentations, I listened with considerable interest as several of you expressed concerns about the appraisal process, its outcome and how that has affected you individually and as recreation residence lot permittees, in general. I empathize with you and your concerns over increased fees.

From the appeal record, I have developed my response to your appeal points and contentions. I have relied heavily on the previous work of the Forest Supervisor, in particular her Responsive Statement.

1. *The fair market values of appellants' lots are as determined by appraiser Tom Stuckey, the appraiser hired by the appellant group to provide a second appraisal.*

The Forest Supervisor has thoroughly discussed this issue in her Responsive Statement under Contention 1. The Georgetown Lake Homeowner Association contracted with Mr. Stuckey to have a second appraisal done in accordance with specifications provided by the Forest Service. Mr. Stuckey completed A Self-Contained Appraisal Report on November 30, 1999. Mr. John Hickey, ARA, Regional Review Appraiser, reviewed this report and found, "In his opinion, this report cannot be used for Federal appraisal purposes due to 1) the assumption that the lots are undevelopable, 2) the date of the appraisal, November 30, 1999, should match the date of the first appraisal, December 18, 1997, and 3) the incorrect assumption that there is private ownership between cabins and the lake" (Appeal Record, Doc. 30, p. 6).

Mr. Stuckey's appraisal did not meet the Forest Service standards and he was unwilling to provide an appraisal that would meet Forest Service specifications. Without two valid appraisals the Forest Supervisor was unable to consider both appraisals in determining fair market value. She correctly considered the only valid appraisal, the one prepared for the Forest Service by Ms. Kim Johnson, ARA, Phoenix, Arizona. I agree with the Forest Supervisor that this is the only valid appraisal that can be considered in determining annual rental fees.

2. *The lots are undevelopable. The Forest Service appraiser ignored state and county zoning laws relative to the development of property for parcels under one and two acres in size. Consequently, the second issue raised by this appeal is whether an appellant's lot is developable or undevelopable property, and the effect thereof on its fair market value.*

The Forest Supervisor provided a detailed argument on this issue in her Responsive Statement under Contention 2. I can add nothing; thus, I agree with her argument and conclusion.

3. *The Forest Service appraiser identified the lots as having lake frontage, which they do not.*

I agree with the Forest Supervisor's extensive discussion on this issue under Contention 3 in her Responsive Statement. Mr. Stuckey erred in his assumption that there was private land (other ownership) between the recreation residence lots and the lake, effectively negating any perceived lake frontage. The land between the lake and the permitted lot is National Forest land, as is the permitted lot. Recreation residence owners, as members of the public, are free to use these parcels between their lots and the lake. In fact, some have boat docks and other authorized improvements on the lake, outside of their recreation residence lot boundary. I also believe that the discussion on how the differences between lake-view lots and lake-frontage lots were integrated into the valuation process appropriately represents the regulations that guide this work. I find no evidence that either lake-view or lake-frontage lots were improperly represented in the appraisal process.

4. *Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts. The fair market value of typical lot E (Murto) was reduced because of size of the lot.*

I agree with the Forest Supervisor's summary of the record (Contention 4) on this issue. I find no evidence in the record to indicate that the lots subject to the Murto typical were reduced in value because of size. The Murto lot has improvements approved by the Forest Service and installed at permittee expense. These improvements mitigated the effect of a higher water table. The Forest Service appraiser equated the value of the Murto lot with the adjacent lots once that information on the Murto lot became known. The prior estimate of $75,000 for the Murto lot was in error since the permittee improvements had not been taken into account. These lots now have an appraised value of $45,000, specifically because of the wetness associated with the raised lake level, not lot size.

5. *There is a correlation between the size of the property and the value of the property.*

I find that the Forest Supervisor's discussion of this issue under Contention 5 of her Responsive Statement is correct and succinct. The Forest Service appraiser followed applicable law, regulation and policy, and properly used lot size in combination with other factors to appropriately value these recreation residence lots.

6. *The appellants' appraiser was correct in using a more current date of valuation than the Forest Service appraiser used.*

This issue is discussed in detail in the appeal record and is summarized well in the Forest Supervisor's Responsive Statement under Contention 6. It appears that Mr. Stuckey chose to provide a second appraisal that did not meet federal standards in spite of requests from the Forest Service to meet the standards, and given the opportunity to do so. He did not provide his appraisal information with the same date of value as the Forest Service appraisal (December 18,

1997). Therefore, under those circumstances, the Forest Service could not approve nor consider his appraisal.

IV. DECISION

After a careful review of the appeal record, including exhibits and notes from the oral presentations, I find the Forest Supervisor's decision to be reasonable and in conformance with applicable laws, regulations and policy. Although you brought several issues to the table for re-evaluation, I find that the Forest Supervisor has appropriately discussed and addressed these in her decision. I affirm the Beaverhead-Deerlodge National Forest Supervisor's decision to base calendar year 2000 recreation residence permit fees for your Georgetown Lake lot on the existing, approved Forest Service appraisal. Your request for relief is denied.

This is the final determination of the Department of Agriculture, unless the Chief of the Forest Service, on his own initiative, elects to review the decision within 15 days of receipt (36 CFR 251.87(e) and 251.100).

Sincerely,

/s/ Gary A. Morrison

GARY A. MORRISON
Reviewing Officer
Director of Recreation, Minerals,
Lands, Heritage and Wilderness

cc:
Beaverhead-Deerlodge NF
R-1, Appeals
WO, Appeals
WO, Land Uses

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File Code: 1570 (L)
00-01-00-0021-22; 24-34; 38-39; 41-43; 45-46; 48; 50; 66-67

Date: February 6, 2001

Dear Appellants:

We have received Reviewing Officer Gary A. Morrison's January 22, 2001, and January 23, 2001, decision letters and accompanying documentation. You are appealing the Beaverhead-Deerlodge National Forest Supervisor's decision to implement a fee increase for your recreation residence special-use permit in the Georgetown Lake area, Beaverhead-Deerlodge National Forest.

I find the actions and decisions taken by the Reviewing Officer are consistent with current regulations concerning the fee determination and appraisal process for your special-use permit.

Therefore, I have elected not to review this decision. This action is consistent with 36 CFR 251.100(c) of the Secretary of Agriculture's Appeal Regulations, and constitutes the final administrative determination of the Department of Agriculture.

Sincerely,

/s/ Sally Collins (for)

PAUL BROUHA
Reviewing Officer for the Chief