



United States
Department of
Agriculture

Forest
Service

Gallatin National Forest

Supervisor's Office
10 East Babcock
P.O. Box 130
Bozeman, MT 59771

File Code: 2720

Date: February 22, 2000

Re: Appeal # 00-01-00-0011

Appeal Review Officer
USDA FS Region 1
200 East Broadway
P.O. Box 7669
Missoula, MT 59801

Dear Mr. Morrison:

Enclosed is the responsive statement to the Notice of Appeal of Roald J. Mogen over the Gallatin National Forest Supervisor's decision to determine and implement the year 2000 fee for Mr. Mogen's recreation residence permit based upon the appraised value of the land.

Sincerely,

/s/rich inman
(for)
DAVID P. GARBER
Gallatin National Forest



**RESPONSIVE STATEMENT
36 CFR 251.80 – 251.102
TO THE NOTICE OF APPEAL
OF ROALD J. MOGEN
OVER THE DECISION OF
THE
GALLATIN NATIONAL FOREST SUPERVISOR
TO DETERMINE AND IMPLEMENT
THE RECREATION RESIDENCE PERMIT FEE
FOR THE YEAR 2000
BASED UPON THE APPRAISED VALUE OF THE LAND**

**Gallatin National Forest
Big Timber Ranger District**

Feb 8, 2000

DECISION UNDER APPEAL

The decision under appeal is the December 10, 1999 letter, signed by Livingston District Ranger Terri Marceron for David P. Garber, Gallatin National Forest Supervisor, notifying special use permit holder Roald J. Mogen of the fee for his recreation residence for the year 2000. (A follow-up letter dated December 21, 1999, advised Mr. Mogen of his appeal rights regarding the implementation of the fee.) This decision and notification implemented his fee, based upon the recently updated appraised value, accepted by the Forest Supervisor in a letter dated April 10, 1998.

NOTICE OF APPEAL

A copy of Roald J. Mogen's notice of appeal (NOA) dated December 28, 1999, was received concurrently by the Livingston District Ranger, Terri Marceron and the Regional Forester's Office and subsequently forwarded to and received by the Gallatin National Forest Supervisor's Office on January 18, 2000 for response.

Issue

Whether the appraisal, upon which the year 2000 recreation residence special use permit fee was determined, was unfair, because of the following:

- 1) "Our Mill Creek cabin has limited accessdepending upon snow conditions."
- 2) "The cabin can be used only a total of six months per year as to the lease agreement."
- 3) "When a fair market value was put on the lot, the appraisal became equivalent to owning the land instead of having a special use permit fee."
- 4) "There are limitations set on our rights to make improvements to our cabins or construct additional structures."
- 5) "We are subject to Forest Service approval on potential buyers for our cabin."

Relief Requested

The appellant requests that a new appraisal "is warranted".

BACKGROUND

In 1996, the Gallatin National Forest started preparing for reappraising recreation residence typical lots, so that fees based upon the updated appraisals could be implemented in January 1999 as per policy direction, which is also stated in all recreation residence special use permits. Forest Service policy, as published in the Federal Register Volume 59, No 105, Thursday June 2, 1994 explains the procedure for determining fair market value of recreation residence lot and states that this reappraisal must happen every twenty years. It explains that instead of appraising every individual lot, the Forest Service must establish “in consultation with affected holders” typical lots that have essentially the same or similar characteristics and that those typical lots are then appraised. To comply with that Forest Service policy direction, all Livingston District Gallatin National Forest recreation residence permit holders, including Mr. Mogen, were sent and received a certified, return receipt letter dated April 10, 1997 outlining the typical lot selection criteria and stating that the district was proposing to change the typical that had been used in the last appraisal to make the typical more applicable to the Livingston District lots (i.e. return to a typical that had been used prior to the previous appraisal and that was located more appropriately in the Livingston area rather than up the Main Boulder drainage). That letter explained the reasons for this change and asked for comments from the holders by April 30, 1997. Mr. Mogen did not send in any comments, nor did he contact the Forest Service with any comments.

Forest Service policy direction also states that the Forest Service must “notify affected holders by mail and offer to meet with them to discuss the (appraisal) assignment.....” Furthermore, the policy states “The appraiser must notify holders of such a meeting at least 30 days in advance of the meeting”. To comply with this policy direction, the appraiser and the Gallatin National Forest scheduled meetings and notified all holders (including Mr. Mogen) by certified, return receipt mail dated July 1, 1997 about the meetings and the intent of the meetings. The letter explained that all Gallatin National Forest recreation residence permit holders were invited to attend a meeting to further discuss how the appraisal process would be conducted, to meet the appraiser, to allow holders to arrange to meet with the appraiser on site (at the typical) to provide him information and input and also to ask questions so as to understand the entire process, up to and including the billing. The joint meeting for Big Timber and Livingston District permit holders was held in Big Timber on August 8, 1997. Mr. Mogen did not attend the meeting, though four other Livingston District permit holders did attend. For those permit holders who did not attend the meeting (as well as all permit holders who did attend) all handouts and a summary of the meeting notes and the questions and answers that were discussed were sent out to Mr. Mogen on October 15, 1997. The option of seeking a second appraisal was addressed in those notes, as well as how deeded lands could be compared to land that is under special use permit and how the 5% fee accounts for that difference.

Forest Service policy then requires that “Following review and acceptance of the appraisal, notify affected holders of Forest Service acceptance of the report. In the notification, inform holders that they and other interested parties have 45 days in which to review the appraisal”. To comply with this, all holders, Mr. Mogen included, were sent and received a certified, return receipt letter dated April 10, 1998, that explained that the appraisal reports had been completed and accepted by the Forest Supervisor. The letter also explained options for all holders to look at

or obtain a copy of their typical appraisal report, as well as the course of action to take (seek a second appraisal) if a holder disagreed with the appraisal report and calculated value of the typical lot, and the deadline by which to notify the forest if the holder wanted to seek a second

appraisal. This letter also explained the recent legislation that included the phase-in provisions for the fee and the minimum of one year between the time of notification of the appraised value and the fee implementation, thus moving the implementation date to Jan 1, 2000, instead of January 1, 1999 as stated in his permit. After receiving this letter, Mr. Mogen did not contact the Forest Service at all about seeking a second appraisal or stating that he disagreed with the appraisal report.

The Bill for Collection was sent to Mr. Mogen and dated December 10, 1999. That was followed up with a letter dated December 21, 1999 which explained that the amount of the bill reflects the current appraised value and also advised Mr. Mogen that he has the “right to administratively appeal the decision (in terms of its implementation and process compliance) regarding your new fee...” and that “The Bill for Collection, which is the implementation of your fee, is a decision that is subject to administrative appeal in accordance with direction in 36 CFR 251.80 – 251.102.” It is this fee implementation that Mr. Mogen is now appealing.

DECIDING OFFICER’S RESPONSE TO THE ISSUES AND RELIEF REQUESTED

Appellant’s Issue and Contentions

Whether the appraisal, upon which the year 2000 recreation residence special use permit fee was determined, was unfair, because of the following:

- 1) “Our Mill Creek cabin has limited accessdepending upon snow conditions.”
- 2) “The cabin can be used only a total of six months per year as to the lease agreement.”
- 3) “When a fair market value was put on the lot, the appraisal became equivalent to owning the land instead of having a special use permit fee.”
- 4) “There are limitations set on our rights to make improvements to our cabins or construct additional structures.”
- 5) “We are subject to Forest Service approval on potential buyers for our cabin.”

Gallatin National Forest Response

Statement #1 regarding whether the appraisal was unfair because the “Mill Creek Cabin has limited access....depending upon snow conditions”. The certified, return receipt letter dated April 10, 1997 that Mr. Mogen received, explained how the typical grouping and lot had been selected and the criteria that selection and grouping reflected (access being one of those criteria). The holders were also asked to send in any comments they had. Mr. Mogen did not respond to this letter, nor did he contact the Gallatin National Forest about this issue. As to whether or not the appraisal was unfair, Mr. Mogen, after receiving the April 10, 1998 letter (that informed him that the appraisal was completed and accepted and that if he disagreed with it he should contact the Gallatin National Forest to get instructions for seeking a second appraisal) did not contact the Forest to register any disagreement with the appraisal nor did he express interest in seeking a second appraisal. The appraisal was conducted by a private appraiser, under contract to the Forest Service. The appraiser met the Federal Government required credentials and followed

the required protocols for the appraisal process as stated in the Forest Service policy, published in the Federal Register Vol. 59, No 105, Thursday June 2, 1994. The appraisal was approved by the US Forest Service Review Appraiser and then accepted by the Forest Supervisor. The comparable lots that were used for the appraisal were described in the appraisal report. That report was available for all permit holders to review or obtain a copy.

Statement #2, regarding Mr. Mogen's understanding that the "cabin can be used only a total of six months per year as to the lease agreement." Mr. Mogen's permit states on the first page that "This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere". The permit does not limit the holder to using the cabin only six months per year.

Statement #3, regarding Mr. Mogen's feeling that "When a fair market value was put on the lot, the appraisal became equivalent to owning the land instead of having a special use permit fee." At the August 8, 1997 meeting (see "Background" section of this Responsive Statement), as also summarized in the meeting notes that Mr. Mogen received, the appraiser was asked "Are comparable sales for leased lots or deeded land?" The appraiser's reply was "For deeded land, that is what is specified in the contract." The Forest Service representatives and the appraiser were then asked, "Why compare the typical to deeded land when we can not own the lot? " The answer in the meeting and the summary notes states "The fact that you have limitations on use of lot is why we only charge 5% of the base fee. The 5% is less than a private lease would run." As per Forest Service policy direction (see Federal Register as referenced in the "Background" section of this Responsive Statement), "Appraisals to ascertain the fair market value of the lot will be conducted by the Forest Service at least every 20 years." The policy also states that "The fee shall be 5% of the appraised fair market fee simple value of the lot for recreation residence use....." and that "this value will be adjusted in the following years by utilizing the percent of change in the Implicit Price Deflator-Gross National Product index as of the previous June 30." The Forest was complying with this policy by having the appraiser determine fair market value that was then used to determine the base fee for year 2000.

Statements #4 and #5 also relate to that same fact that the land is leased and thus certain restrictions apply to what the permit holders can do to the land or to whom they can sell the improvements. The consideration for these types of restrictions for a Forest Service special use permit, as opposed to leasing outright deeded land, is in the 5% fee amount, as set out by Forest Service policy, rather than a higher lease fee that is generally applied for leasing private land.

Appellant's Relief Requested

The appellant requests that a new appraisal "is warranted".

Gallatin National Forest Response

In the April 10, 1998 certified, return receipt letter (see the "Background" section of this Responsive Statement), Mr. Mogen was advised that if he disagreed with the estimated value as determined by the appraisal report, he had 45 days from the receipt of that letter within which to

notify the Forest Service that he would like to seek a second appraisal. At that time, Mr. Mogen did not contact the Forest or initiate any action to that effect

/s/david p. garber
DAVID P. GARBER
Gallatin National Forest Supervisor

2-22-00
DATE