



File Code: 1570

Date: March 22, 2000

Route To:

Subject: Appeal 00-01-00-0018

To: Appeal Reviewing Officer, Kathy McAllister

January 10, 2000, my office sent Gary Helming a letter enclosing his Bill for Collection for the calendar year 2000 rental fee for his recreation residence special-use permit. The bill reflected the lot value determined by appraisal as directed by Forest Service policy, which became effective June 17, 1994 (Federal Register Vol. 59, No. 105, June 2, 1994). Mr. Helming disagreed with the appraisal results, but did not have a second appraisal done. His year 2000 rental fee is based on the single Forest Service appraisal.

Supporting documents are included in the project file.

Mr. Helming's reasons for appeal are:

1. Disagreement with the appraisal due to an "error" in lot size; an inability to place septic facilities within the authorized area; the fact the area is inaccessible for more than half of a typical year, and he disagrees with comparing this property with lots at Georgetown Lake.
2. Disagreement with the fair market value of \$32,000, derived from the Forest Service appraisal.
3. The site has been leased since 1926, but never formally appraised. The new appraisal is not an update of an old appraisal.

Contention #1: A very significant error was made in the size of the property appraised.

Response: Forest Supervisor Austin's letter of April 26, 1999 acknowledges the lot size "error" which Mr. Helming refers to. The agency's contractor incorrectly stated the lot size as 0.8 acres when it should have been 0.075 acres. The April 26, 1999 letter states that subsequent to Mr. Helming pointing out this situation, the contracting officer discussed it with the contractor. The contractor stated the lot size difference would not affect the determination of value, because she assessed the value of a building site at the lake. The exact size of the building site was not an issue, so long as it was large enough to accommodate a cabin. In this case, the cabin is already in place so the lot is obviously large enough (Project File Pages 87-88).

Further, federal appraisal standards and specifications the contractor was required to use, state "National Forest recreation residence lots often enjoy a much greater effective area than the permitted area" (Project File Pages 89-93). The effective area of the Twin Lakes special use is not limited to the .075 acre lot itself. As shown on the Helming plats of 8/10/49 and 1/8/81,



there are no other recreation residences at Twin Lakes (Project File Pages 110&112). As shown on the Southwest Montana Interagency Visitor/Travel Map, the only other development in the vicinity is a small Forest Service cabin and campground located to one side of the Helming recreation residence, some 100 yards distant (Project File Page 114).

Mr. Helming states he did not proceed with a second appraisal because it would cost nearly \$8,000 and the Forest Supervisor had already indicated that she was unlikely to give fair consideration to a second appraisal, because of the unfair way she responded to his discovery of the lot size "error." In fact, Forest Supervisor Austin's letter of April 26, 1999 shows that due consideration was given to the lot size situation Mr. Helming identified. However, the contract appraiser determined that the lot size difference would not change the appraised value (Project File Pages 85-88). When Mr. Helming's arguments about lot size failed to convince the Forest Supervisor that the agency's appraisal was incorrect, his recourse was to obtain a second appraisal. As stated in his appeal letter, he did not.

Contention #2: The State of Montana does not permit construction of new sanitary sewers and well facilities on tracts of land of less than one acre. This renders the site unbuildable.

Response: Mr. Helming states that the 0.075 acre lot is less than minimum size the State of Montana requires for developing a septic system, thus the site is unbuildable. He states there is no existing septic system to grandfather under state regulation, because none was ever installed. However, it is clear that many features already used by Mr. Helming are located off the .075 acre lot. Comparison of the 1949 and 1981 plats shows that an approach road and rock wall both extend off the lot and Mr. Helming's special use boat dock is located entirely off the lot (Project File Pages 96-113). If these features have been accommodated, a septic system could certainly be accommodated, should one be required. However, it appears the Helmings has previously determined that they do not require a septic system. Mr. Bruce Helming's letter of 3/20/80 and Forest Service follow-up letters on 3/24/80, 3/25/80, 4/11/80, 8/6/80, 8/19/80, 10/30/80, 1/30/81, and 2/6/81 indicate that lot size was reduced from 0.97 acres to the current 0.075 acres in response to a 1980 request by Mr. Bruce Helming. At that time Mr. Bruce Helming agreed to remove an old pit toilet from the relinquished portion of the lot. He also agreed that users of the recreation residence would use the toilet at the Forest Service campground. He further agreed that the smaller lot size met all of his needs (Project File Pages 96-113).

Contention #3: The Forest Service appraisal does not reflect the fact there are no utilities to the site, and the site is not accessible for more than half of a typical year.

Response: Mr. Helming contends the comparable lots used by the appraiser were located at Georgetown Lake and are inappropriate for comparison with his lot. He states the Georgetown properties are open for year round use with many services and utilities not available at Twin Lakes. While no Recreation Residence may be used as a permanent residence, there are differences between the Georgetown comparable sales and the Twin Lakes lot. The appraiser acknowledged these differences in her appraisal report of December 18, 1997 and took them into account when she adjusted the Georgetown comparable sales downward by 50% to obtain the value of the Twin Lakes lot (Project File Pages 1-84).

Contention #4: The new appraisal is not an update of an old appraisal, reflecting recent land values.

Response: Forest Service recreation residence appraisal policy, as outline in FSH 2709.11, section 33.3, and Federal Register Volume 59, No. 105, June 2, 1994, does not require an appraiser to conduct a reappraisal by updating a prior appraisal of the lot. Rather, it requires the appraiser to “Ensure appraised values are based on comparable market sales...” (Federal Register Vol. 59, No. 105 page 28730) and result in “a cash market value estimate” of the lot (Forest Service Recreation Residence Lot Appraisal Specifications, 2.45).

It is not clear from Mr. Helming’s appeal letter whether he is asking that the agency’s 1997 appraisal state lot value on a per frontage foot. This unit of measurement was used by both Mr. Bruce Helming and the Forest Service following the 1980 appraisal (Bruce Helming’s letter of 3/20/80 and Forest Service letters of 1/30/81 and 2/6/81, Project File Pages 96-108). If Mr. Helming expects this unit of measurement to be used in the 1997 appraisal, Recreation Residence Lot Appraisal Specifications 2.46 item 8 clearly states that “...final estimate of value shall be on the basis of the total value for the typical lot, rather than a value per square foot, per front foot, etc.”

Please contact Lee Derksen at 683-3935 if you have questions regarding the project file information.

/s/Jack DeGolia for

JANETTE S. KAISER
Forest Supervisor

Enclosures