



File Code: 1570 (251-1)
#00-01-00-0061

Date: January 23, 2001

Jacqueline Malee
215 Walnut Street
Anaconda, MT 59711

CERTIFIED MAIL – RETURN RECEIPT
REQUESTED

Dear Ms. Malee:

This letter is my review decision of your Notice of Appeal (NOA) on the decision to implement a new Recreation Fee Schedule for your recreation residence lot, Group A, Lot 106, located at Echo Lake, on the Beaverhead-Deerlodge National Forest. The recent appraisal and the fee based on the 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. A discussion of the appeal process is presented in the Forest Supervisor’s Responsive Statement.

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, regulations and policy. Information that was acquired during Mr. Bernard Everett’s oral presentation on October 13, 2000, here in Missoula, and from others 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 24, 2000, I notified you that several appeals were being consolidated pursuant to 36 CFR 251.95(b), due to significant similarities in their issues. The issues for the following appellants are similar and are consolidated for review. The Beaverhead-Deerlodge Forest Supervisor combined your and Mr. Bernard Everett’s appeals in her Responsive Statement of July 14, 2000. I will be using this Responsive Statement to make my review of your appeal.

Appeal Number

Appellant(s)

#00-01-00-0060
#00-01-00-0061
#00-01-00-0062

Mary Ferriter
Jacqueline Malee
Terrance Galle



The Forest Supervisor for the Beaverhead-Deerlodge National Forest succinctly summarized the history of the appraisal process as it has affected you in her Responsive Statement. I will reference this document throughout my review. In addition to this record of the process, 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 Echo 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 appellant's lot should be one-half the value established by the Forest Service contract 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. 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 (our) permitted properties. The fair market value of typical lot E (Murto, Georgetown Lake) was reduced because of the size of the lot.
4. There is a correlation between the size of the property and the value of the property.
5. The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellants' permits, and therefore is in contravention of 36 CFR 251.57(1). [Please note that this is more specifically 36 CFR 251.57(a)(1).]
6. The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.
7. It is a violation of Forest Service appraisal policy and requirements for an appraiser to conduct an appraisal if they are not familiar with the property they are appraising.
8. The Forest Service appraiser identified the lots as having lake frontage, which they do not.
9. Comparable sales from 1997 should have been used rather than the sales information from 1993 and 1994 that the Forest Service appraiser used.

The relief requested is to reduce the fair market value of the affected recreation residence lots to values that would reduce my fee by one-half.

III. REVIEW FINDINGS

I have thoroughly reviewed the appeal record, including the concerns raised in your Notices 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 13, 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 you and several others expressed concerns about the appraisal process, its outcome and how that has affected you individually and recreation residence 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 July 14, 2000, Responsive Statement.

1. *The fair market values of an appellant's lot should be one-half the value established by the Forest Service contract appraiser.*

The Forest Supervisor has thoroughly discussed this issue in her Responsive Statement under Contention 1. The Forest Service contract appraiser, Ms. Kim Johnson, ARA, Phoenix, Arizona, followed direction and regulation in completing her appraisals and preparing her appraisal reports, dated December 18, 1997. These reports were reviewed and approved by Mr. John Hickey, ARA, Forest Service Regional Review Appraiser. There was no second appraisal done on the Echo Lake typical lots. The Forest Supervisor correctly considered the valid appraisal prepared by Ms. Johnson in determining annual recreation lot permit fees. I agree with the Forest Supervisor that since you did not cite any evidence to reduce lot value by one-half, the current appraisal should be used for calculating annual permit 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. *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 the appellant's permitted property. The fair market value of typical lot E (Murto at Georgetown Lake) was reduced because of size of the lot.*

I agree with the Forest Supervisor's summary of the record (Contention 3) 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 at Georgetown Lake has improvements approved by the Forest Service and installed at permittee expense. These improvements mitigated the effect of a higher water table. The appraiser equated the value of the Murto lot with the adjacent lots, the new typical being the Kosena lot, once that information on the Murto lot became known. The prior estimate of \$75,000 for the Murto lot was in error since permittee improvements had not been taken into account. These lots have an appraised value of \$45,000, specifically because of the wetness associated with the raised lake level, not lot size.

4. *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 4 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.

5. *The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellants' permits, and therefore is in contravention of 36 CFR 251.57(1), [more specifically 251.57(a)(1)].*

I understand this issue to mean obtaining a fair appraisal of a recreation residence lot, the use of which is restricted to those rights and privileges authorized under special use permit. I find that the appraisal of the recreation residence lots did in fact consider those rights and privileges authorized under permit. The authorization is for a lot to be used for recreation residence purposes. This recreation residence use fee is established at 5 percent of the appraised value in lieu of a higher 8-12 percent assessment that is common for private lands. The Forest Supervisor's argument under Contention 5 provides a concise discussion of this issue. I agree with her analysis and conclusion.

6. *The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellants' lots.*

The fee simple values of the lots have been established through an appropriate appraisal that was reviewed and approved by the Forest Service. The Forest Supervisor covered this issue well in her Responsive Statement under Contention 6. The only basis for the permit fee is the approved Forest Service appraisal.

7. *It is a violation of Forest Service appraisal policy and requirements for an appraiser to conduct an appraisal if they are unfamiliar with the property they are appraising.*

I find the Forest Supervisor's discussion of this issue under Contention 7 of her Responsive Statement to be correct. I will add that the lot grouping, to which a typical lot's appraisal applies, is not established by the appraiser. The Forest Supervisor establishes groups through an interactive process with recreation residence lot permit holders. The typical lot for each group is determined during this interactive process. The appraiser then establishes a value for that typical lot. Ms. Johnson is very familiar with recreation residence lot appraisals, and completed the typical lot appraisals in the Echo Lake area as required in the Federal Register, Vol. 59, No. 105, June 2, 1994, Section 33.3, and Forest Service Recreation Residence Lot Appraisal Specifications.

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

I agree with the Forest Supervisor's discussion of this issue under Contention 8 in her Responsive Statement. Mr. Stuckey, the contract appraiser for Georgetown Lake recreation residence lots, hired by the Georgetown Lake Homeowners Association to complete a second appraisal there, 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. This assumption is incorrect but may have carried over to Echo Lake permittees. 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.

9. *Comparable sales from 1997 should have been used rather than the sales information from 1993 and 1994 that 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 9. I concur with the Forest Supervisor's evaluation and conclusion on this point. Ms. Johnson used appropriate sales information in determining the recreation residence lot values.

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 the calendar year 2000 recreation residence permit fees for your Echo 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, Lands



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Department of
Agriculture

Forest
Service

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File Code: 1570 (L)
00-01-00-0061-A251

Date: February 6, 2001

Ms. Jacqueline Malee
215 Walnut Street
Anaconda, MT 59711

Dear Ms. Malee:

We have received Reviewing Officer Gary A. Morrison's January 23, 2001, decision letter 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 located in Group A, Lot 106, in the Echo Lake area, Beaverhead-Deerlodge National Forest.

I find the actions taken by the Reviewing Officer are consistent with current statutory 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 D. Collins (for)

PAUL BROUHA
Reviewing Officer for the Chief