



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 28, 2000

Re: appeal # 00-01-00-0013

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 Bob Reynolds over the Gallatin National Forest Supervisor's decision to determine and implement the year 2000 fee for Mr. Reynolds' recreation residence permit based upon the appraised value of the land.

Sincerely,

/s/D.P. Garber

DAVID P. GARBER
Gallatin National Forest Supervisor



RESPONSIVE STATEMENT
36 CFR 251.80-251.102

TO THE NOTICE OF APPEAL
OF BOB REYNOLDS

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
Bozeman Ranger District

Feb 21, 2000

DECISION UNDER APPEAL

The decision under appeal is the December 22, 1999 letter signed by Bozeman District Ranger Jan Lerum for David P. Garber, Gallatin National Forest Supervisor, notifying recreation residence special use permit holder Bob Reynolds of the fee for his recreation residence for the year 2000 and advised Mr. Reynolds of his appeal rights (under 36 CFR 251.90) regarding implementation and process compliance. This fee implementation is based upon the recently updated appraised value that was accepted by the Forest Supervisor in a letter dated April 10, 1998.

NOTICE OF APPEAL

A copy of Bob Reynolds' notice of appeal (NOA) dated January 12, 2000, was received by the Regional Forester's Office and subsequently forwarded to and received by the Gallatin National Forest Supervisor's Office on January 25, 2000 for response.

Issue

- 1) Whether the appraisal of the typical lot is an appealable direct decision on his base annual rental fee;
- 2) Whether his lot should be "thrown into the Big Sky Resort climate to establish the lease fee" when "my small cabin and resources do not have anything in common with that area, making this assessment very unfair. My cabin was there long before Big Sky.";
- 3) That "this fee will most certainly force lower scale permittees such as myself to sell out,"

Relief Requested

The appellant requests that the Forest Service "reconsider this fee or how it is implemented".

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 To comply with that Forest Service policy direction, all Bozeman District Gallatin National Forest recreation residence permit holders were sent and received a certified, return receipt letter dated **September 10, 1996** **outlining** the typical lot groupings that had been used during the last appraisal cycle, approximately twenty years ago. It listed the typical lot for Mr. Reynolds’ lot as Tamphery Creek Lot #11 (Grohman). That letter asked for comments from the holders by October 15, 1996). Mr. Reynolds did not send in any comments, nor did he contact the Forest Service with any comments. The Forest did receive some comments from Bozeman District Cascade Creek group. Responding to these timely comments, the Forest created two more typical lots and groupings for the lots in that Cascade Creek area.

To meet Forest Service policy, Gallatin National Forest, cooperating with other east-side forests, contracted a private, professional appraiser whose credentials met the criteria stated in the Federal Register. The appraiser was instructed in the appraisal procedures required by Forest Service policy. These procedures, outlined in the Federal Register, explain the process the appraiser must follow in determining fair market value of recreation residence lots and what considerations must be included. .

Forest Service policy direction also states that the appraiser 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 Gallatin National Forest and appraiser scheduled meetings and notified all holders (including Mr. Reynolds by certified, return receipt mail dated June 20, 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 lot) 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 meeting for Bozeman District permit holders was held in Bozeman on July 24, 1997.

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 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 lot 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. Reynolds did contact the Forest Service and asked to be sent information about seeking a second appraisal (which he was then sent), but he did not end up seeking the actual second appraisal.

The Bill for Collection was sent to Mr. Reynolds and immediately followed up by a letter dated December 22, 1999. This letter reminded permit holders of the April 10, 1998 letter that had informed holders that the appraisals were complete and accepted by the Forest Supervisor and the determined value of their typical lot, but that “the appraised value of your typical lot is not a direct decision on your base annual rental fee and therefore not subject to administrative appeal.” This December 22, 1999 letter went on to say that the amount of the bill reflected the current appraised value and also advised Mr. Reynolds 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 as well as the other listed points that Mr. Reynolds is appealing.

DECIDING OFFICER’S RESPONSE TO THE ISSUES AND RELIEF REQUESTED

Appellant’s Issue and Contentions

- 1) Whether the appraisal of the typical lot is an appealable direct decision on his base annual rental fee;
- 2) Whether his lot should be “thrown into the Big Sky Resort climate to establish the lease fee” when “my small cabin and resources do not have anything in common with that area, making this assessment very unfair. My cabin was there long before Big Sky.”;
- 3) That “this fee will most certainly force lower scale permittees such as myself to sell out, ...”

Gallatin National Forest Response

Statement # 1 questioning whether the appraised value of the typical lot is an appealable direct decision: Forest Service policy, as published in the Federal Register, Vol. 59, No 105, Thursday June 2, 1994 explains that if after the holders have reviewed the first appraisal report and are not satisfied, the Forest Service must “provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service.” Then, the policy explains, the Forest Service must “give full and complete consideration to both appraisals.....If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor. “ In this case, Mr.

Reynolds was advised in the letter of April 10, 1998 letter that he could seek a second appraisal if he disagreed with the appraised value of the typical lot, but Mr. Reynolds did not seek a second appraisal.

Statement #2 questions why Mr. Reynolds' lot should be considered in the Big Sky area for purposes of appraising its value. Forest Service policy requires that the appraiser must “ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject lots’ characteristics.” The policy lists those characteristics. Following that policy, the appraiser selected comparable sales for establishing the value of the Mr. Reynolds’ typical lot. The appraisal report, that was available to all permit holders, contains the descriptions of those lots used for comparison. By not seeking a second appraisal, Mr. Reynolds did not take advantage of the opportunity to perhaps have another appraiser use different comparable sales or to truth the ones that the appraiser did use.

Statement #3 contends that the newly implemented fee will force some permit holders to sell since it is so high. In the Federal Register (Vol. 59, No 105, Thursday June 2, 1994) policy and background discussion on the use of the 5% factor for fee determination, it was emphasized that the “agency is required to obtain fair market value for the use of the Federal lands. Fair market value is determined by appraisal or other sound business management practice, such as market analysis or competitive bid. Annual fees for recreation residences are determined by appraisal. A factor of 5 percent is applied to the appraised value to determine the annual fee.” In this Federal Register discussion of public comments received on the issue, the Forest Service reaffirmed its decision to “use the 5% applied to appraised values to determine annual fees.” While this same issue of the Federal Register does reaffirm that recreation residence special use permits are “valid and important components of the overall National Forest recreation program”, it does not address or direct the program toward any specific level of income that holders must have.

Appellant’s Relief Requested

The appellant requests that the Forest Service “reconsider this fee or how it is implemented”.

Gallatin National Forest Response

In the April 10, 1998 letter, Mr. Reynolds was advised that if he disagreed with the estimated value of the typical lot, 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. While Mr. Reynolds requested information on how to seek a second appraisal, he did not choose to take advantage of the

opportunity to actually seek a second appraisal. Since the Gallatin National Forest implemented the fee determination process according to Forest Service policy, any further relief that Mr. Reynolds is suggesting would require a Forest Service policy change, an action that is beyond the scope of the Gallatin National Forest's jurisdiction and authority.