



United States
Department of
Agriculture

Forest
Service

XXXXXXX

XXXXXXXXXXXX

File Code: 2340/ 1570

Date: March 13, 2000

Re: Appeal # 00-01-00-0017

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

Sincerely,

/s/Rich Inman

for

DAVID P. GARBER
Forest Supervisor

enclosures



RESPONSIVE STATEMENT
36 CFR 251.80-251.102

TO THE NOTICE OF APPEAL
OF CLAIR HOWARD

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
Hebgen Lake Ranger District

Feb 28, 2000

DECISION UNDER APPEAL

The decision under appeal is the January 7, 2000 letter signed by Hebgen Lake District Ranger Stan Benes for David P. Garber, Gallatin National Forest Supervisor, notifying recreation residence special use permit holder Clair Howard of the fee for her recreation residence for the year 2000 and advised Ms. Howard of her 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 Clair Howard's notice of appeal (NOA) dated February 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 February 17, 2000 for response.

Issues

Contention #1) "The new fee represents a 171 percent increase, which we believe is an unfair and extraordinary increase" and that "a fee hike of this magnitude will make it difficult for average-income families like us to continue to have the cabin."

Contention #2) Whether it was inappropriate for the appraiser to use sales for comparison that were located in Henry's Lake/ Island Park, Idaho, without adjusting for "differing locations and for seasonal use", since "the harsh winter weather conditions in the West Yellowstone area play a major role in limiting use of our cabin strictly to the summer season" whereas "places in Henry's Lake and Georgetown may be used through out the entire year."

Contention #3) That although the appraisal report stated that "if restrictions are greater on the special use permits, that greater restriction is recognized in the amount of the lease rate, " the lease rate is not recognizing those restrictions.

Contention #4) That "this fee will most certainly force lower scale permittees such as myself to sell out,"

Relief Requested

1. We "believe there should be an adjustment for differing locations and for seasonal use. The harsh winter weather conditions(limit) use of our cabin strictly to the summer season. Places in Henry's Lake and Georgetown may be used through out the entire year."
2. "We would like to see our appraisal based on comparable sales in the Hebgen Lake area, with consideration for the restrictions contained in a government permit."

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 lots 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 Hebgen Lake Ranger District recreation residence permit holders were sent and received a certified, return receipt letter dated October 2, 1996 outlining the typical lot groupings that had been used during the last appraisal cycle, approximately twenty years ago. It listed Romsett #5, Ms. Howard's lot, as the typical lot for her grouping. That letter asked for comments from the holders by January 1, 1997.

To meet Forest Service policy, the 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 that “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 Ms. Howard, by certified, return receipt mail dated June 3, 1997 about the meetings and the intent of the meetings. The letter explained that all Hebgen Lake Ranger District 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 Hebgen Lake Ranger District permit holders was held in West Yellowstone on July 11, 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 her permit. After receiving this letter, Ms. Howard did contact the Forest Service and asked to be sent information about seeking a second appraisal (which she was then sent June 24, 1998) , but she did not end up seeking the actual second appraisal.

The Bill for Collection, was sent to Ms Howard along with a letter dated January 7, 2000. 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 January 7, 2000 letter went on to say that the amount of the bill reflected the current appraised value and also advised Ms. Howard that she 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 Ms. Howard is now appealing.

DECIDING OFFICER’S RESPONSE TO THE ISSUES AND RELIEF REQUESTED

Appellant’s Issue and Contentions

Contention #1) "The new fee represents a 171 percent increase, which we believe is an unfair and extraordinary increase" and that "a fee hike of this magnitude will make it difficult for average-income families like us to continue to have the cabin."

Contention #2) Whether it was inappropriate for the appraiser to use sales for comparison that were located in Henry's Lake/ Island Park, Idaho, without adjusting for "differing locations and for seasonal use", since "the harsh winter weather conditions in the West Yellowstone area play a major role in limiting use of our cabin strictly to the summer season" whereas "places in Henry's Lake and Georgetown may be used through out the entire year."

Contention #3) That although the appraisal report stated that "if restrictions are greater on the special use permits, that greater restriction is recognized in the amount of the lease rate, " the lease rate is not recognizing those restrictions.

Gallatin National Forest Response

1 contends that this newly implemented fee is an "unfair" and 'extraordinary' increase that will "make it difficult for average-income families like us to continue to have the cabin". In the Federal Register (Vol 59, No 105, Thursday June 2, 1994) the 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 income bracket.

#2 questions the appropriateness of selecting comparable sales for the appraisal in Henry's Lake or Island Park, Idaho, where cabins "may be used throughout the entire year" versus cabins in West Yellowstone, where Ms. Howard feels the cabin use is limited strictly to the summer season due to West Yellowstone's harsh winter conditions. Forest service policy required 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 Ms. Howard's lot. The appraisal report was reviewed by a U.S. Forest Service review appraiser to ensure that the report met forest service policy requirements, and the report was then accepted by the Forest Supervisor. The appraisal report, that was available to all permit holders, contains the description of those lots used for comparison. By not seeking a second appraisal, Ms. Howard 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.

#3 contends that the lease rate does not reflect the fact that the national forest cabin permits contain restrictions that may be greater than those covenants or restrictions associated with lots used for comparable sales, which most likely included private land. The issue of comparing deeded land to leased national forest land was discussed in the initial holders meeting with the Forest Service staff and the appraiser in West Yellowstone. It was explained that the Forest Service lease amount reflects that comparison by charging 5% of the appraised value of the land, rather than a higher amount. In its own "Appraisal Guidelines" publication (9/96) provided to association members, the National Forest Homeowners Association acknowledges that the 5 percent fee is fair because "...market surveys consistently show that the factor used by the private market for rental property is 8 to 12 percent of fair market value." The Forest Service believes that 5 percent, rather than a higher amount, is a fair fee for this use of national forest system land because the special-use permits often contain provisions which restrict the type, size and number of improvements, and prohibit full-time occupancy.

Appellant's Relief Requested

The appellant "would like to see our appraisal based on comparable sales in the Hebgen Lake area (as opposed to the Henry's Lake or Island Park areas) , with consideration for the restrictions contained in a government permit."

Gallatin National Forest Response

In the April 10, 1998 letter, Ms. Howard was advised that if she disageed with the estimated value as determined by the appraisal report , she had 45 days from the receipt of that letter within which to notify the forest service that she would like to seek a second appraisal. While Ms. Howard requested information on how to seek a second appraisal, she did not choose to take advantage of the opportunity to actually seek a second appraisal. Since the Gallatin National Forest followed the policy directions in conducting the appraisals and subsequently implementing the fee determination process using the 5% factor, any further relief that Ms. Howard 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.