United States Department of Agriculture | **Forest Service** | **Northern Region** | **200 E. Broadway P.O. Box 7669 Missoula, MT 59807**

File Code: 1570 (251-1)
#00-01-00-0041

Date: January 22, 2001

Andrew and Charen McFarland
1009 W. Platinum Street
Butte, MT 59701

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. and Mrs. McFarland:

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, Georgetown Lake Group #2, Tract B, Lot #3, located 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. An outline 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 your oral presentation held 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 April 6, 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. I have also represented your individual concerns that may differ from those which were consolidated.

Appeal Number	**Appellant(s)**
#00-01-00-0037	Page Wellcome
#00-01-00-0038	Dorothy Dire
#00-01-00-0039	Ronald and Catherine Eccleston
#00-01-00-0040	William F. Antonioli
#00-01-00-0041	**Andrew and Charen McFarland**
#00-01-00-0042	Marvin F. Cline
#00-01-00-0043	Norman and Patricia Olson
#00-01-00-0044	Bernard J. and Charmaine Everett

#00-01-00-0045	Donald L. Gillespie
#00-01-00-0046	Paula B. Jermunson
#00-01-00-0047	Dodge and Kathleen Leary
#00-01-00-0048	Mildred Williams
#00-01-00-0049	Stephen C. Neal
#00-01-00-0050	John Pahut

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 dated July 11, 2000. 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 Notices 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 Georgetown 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 appellants' lots are as determined by appraiser Tom Stuckey, MAI, RM, State of Montana General Certification No. 70 (Appellants' 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. The Forest Service appraiser identified the lots as having lake frontage, which they do not.
4. 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 permitted properties. The fair market value of typical lot E (Murto) was reduced because of the size of the lot.
5. There is a correlation between the size of the property and the value of the property.
6. The appellants' appraiser was correct in using a valuation date more current than the Forest Service appraiser used.
7. 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).
8. On several occasions in the Swan Valley of western Montana, the Forest Service accepted appraisals based upon the evidence of undevelopable property. Forest Service Chief Appraiser, Paul Tittman, unilaterally, and in an arbitrary and capricious manner, instructed that the previously accepted Swan Valley "undevelopable appraisal" be rejected in an obvious attempt to circumvent and undermine appellants' appraisals.

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

The relief requested is to reduce the fair market value of the affected recreation residence lots to those values presented in Mr. Stuckey's appraisal dated November 30, 1999.

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 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 several appellants 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 11, 2000, Responsive Statement.

1. *The fair market values of appellants' lots are as determined by appraiser Tom Stuckey, the appraiser hired by the appellant group to provide a second appraisal.*

The Forest Supervisor has thoroughly discussed this issue in her Responsive Statement under Contention 1. The Georgetown Lake Homeowner Association contracted with Mr. Stuckey to have a second appraisal done in accordance with specifications provided by the Forest Service. Mr. Stuckey completed A Self-Contained Appraisal Report on November 30, 1999. Mr. John Hickey, ARA, Regional Review Appraiser, reviewed this report and found, "In his opinion, this report cannot be used for Federal appraisal purposes due to 1) the assumption that the lots are undevelopable, 2) the date of the appraisal, November 30, 1999, should match the date of the first appraisal, December 18, 1997, and 3) the incorrect assumption that there is private ownership between cabins and the lake" (Appeal Record, Doc. 30, p. 6).

Mr. Stuckey's appraisal did not meet the Forest Service standards and he was unwilling to provide an appraisal that would meet the Forest Service specifications. Without two valid appraisals the Forest Supervisor was unable to consider both appraisals in determining fair

market value. She correctly considered the only valid appraisal, the one prepared by Ms. Kim Johnson, ARA, Phoenix, Arizona. I agree with the Forest Supervisor that this is the only valid appraisal that can be considered in determining annual rental 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 that the "undevelopable lot size" assumption is incorrect.

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

I agree with the Forest Supervisor's extensive discussion on this issue under Contention 3 in her Responsive Statement. Mr. Stuckey 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. 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.

4. *Tract value modifications have been made in select cases outside of the contract appraisal process for select tracts. The fair market value of typical lot E (Murto) was reduced because of size of the lot.*

I agree with the Forest Supervisor's summary of the record (Contention 4) 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 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 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.

5. *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 5 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.

6. *The appellants' appraiser was correct in using a more current date of valuation than 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 6. Mr. Stuckey chose to provide a second appraisal that did not meet federal standards in spite of requests from the Forest Service to meet the standards, and given the opportunity to do so. He did not provide his appraisal information with the same date of value as the Forest Service appraisal (December 18, 1997). Therefore, under those circumstances, the Forest Service could not approve nor consider his appraisal.

7. *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).*

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. 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.

8. *On several occasions in the Swan Valley of western Montana, the Forest Service accepted appraisals based upon the evidence of undevelopable property. Forest Service Chief Appraiser, Paul Tittman, unilaterally, and in an arbitrary and capricious manner, instructed that the previously accepted Swan Valley "undevelopable appraisal" be rejected in an obvious attempt to circumvent and undermine appellants' appraisals.*

This issue is similar to Contention 2 above. The Forest Supervisor has provided arguments in Contention 8 of her Responsive Statement that apply here, also. I find nothing in the appeal record to indicate that the Forest Service appraisal was completed incorrectly, or that appraised values were inappropriately applied to the subject lots near Georgetown Lake.

9. *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. The only basis for the permit fee is the approved Forest Service appraisal.

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 Georgetown 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, Land Uses

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File Code: 1570 (L)
00-01-00-0021-22; 24-34; 38-39; 41-43; 45-46; 48; 50; 66-67

Date: February 6, 2001

Dear Appellants:

We have received Reviewing Officer Gary A. Morrison's January 22, 2001, and January 23, 2001, decision letters 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 in the Georgetown Lake area, Beaverhead-Deerlodge National Forest.

I find the actions and decisions taken by the Reviewing Officer are consistent with current 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 Collins (for)

PAUL BROUHA
Reviewing Officer for the Chief