



United States
Department of
Agriculture

Forest
Service

Beaverhead-Deerlodge
National Forest

File Code: 1570 (251 appeal)
Route To:

Date: July 12, 2000

Subject: Responsive Statement, Echo Lake Recreation Residence Appeal – Bonnie and John Powell

To: Appeal Deciding Officer, Kathy McAllister

In accordance with 36 CFR 251.94 (b) I am hereby submitting the responsive statement for an Echo Lake recreation residence appeal. The following person appealed the lot value determined by appraisal as directed by Forest Service policy, effective June 17, 1994 (Federal Register Vol. 59, No. 105, June 2, 1994).

Appellant	Appeal #	Typical Lot
Bonnie and John Powell	00-01-00-0035	Lot 129 - Ash

Seven appeals were filed by Echo Lake recreation residence permittees. These appeals will be addressed in separate responsive statements.

The R.O. group the recreation residence appeals based on similarities. (Appeal Record, Docs. 7, 8, 9). These groupings differ from how the appeals were grouped for purposes of preparing responsive statements.

The appeal record is contained in two 3-ring binders with several sections. An index of the project file is attached to this letter. The project file will be delivered to your office the week of July 10, 2000. References are made throughout this letter to the appeal record. **Please note:** the same appeal record will be used for all the Echo Lake appeals.

Decision Being Appealed

On January 24, 2000, District Ranger Bob Gilman sent the appellant a letter enclosing their Bill for Collection for the calendar year 2000 rental fee for their recreation residence special-use permit (Appeal Record, Docs. 2 and 3). Please note that the appellants paid their Bill for Collection. The bill reflected the lot value determined by appraisal as directed by Forest Service policy: Federal Register Vol. 59, No. 105, June 2, 1994. (Appeal Record, Doc. 20). This appraisal was completed on September 18, 1997 by Ms. Kim Johnson, ARA, Phoenix, AZ, under contract number 53-84M-5-00433 awarded by the Forest Service. The appellants disagreed with the appraisal results, but did not have a second appraisal done at their own expense.

The Pintler District Ranger is unique on the Beaverhead-Deerlodge in having authority to reissue recreation residence permits. This presents a problem in the permit appeal process. It makes the appeal reviewing officer and the person in charge of the appraisal of the fees the same person,



the Forest Supervisor. In order for the appeal to be reviewed by people not involved in the appraisal, the appeal was forwarded to the Regional Appeal Deciding Officer, Kathy McAllister. (Appeal Record, Doc. 4).

Decision Documentation Addressing Decision Being Appealed:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 2	2720/5410 letter dated 5-29-98 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 3	2720 decision letter dated 1-24-00 transmitting Bills for Collection to recreation residence permit holders for their special use permit.
Document 4	Representative 1570 letter acknowledging receipt of appeal and informing appellants their appeal will be forwarded to the Regional Appeal Deciding Officer, Kathy McAllister.
Document 20	Federal Register Vol. 59, No. 105, June 2, 1994.

Background Information

Recreation residence lots are appraised at 20-year intervals. Similar lots are combined into a single group and one typical lot is appraised per group. The appraisal provides an estimate of fair and equitable cash market value for a typical lot (rather than all individual lots) within groups that have essentially the same or similar value characteristics. The value estimate for the typical lot is then applied to all lots in the group. In the appraisal process, lots are treated as if in fee ownership and restricted to a recreation residence lot use. Holder provided improvements on and to the lot are excluded from the appraisal.

Several typical lots were used for the Echo Lake group. Lot 129 (Ash) was the typical lot used for the appellants' lot value.

Appeal Resolution Meeting

Recreation residence permittees were involved throughout the appraisal process. They were also involved in attempts to resolve the issues surrounding their appeals of their recreation residence lot fee. Appellants were invited to a meeting that was held on March 20, 2000 to discuss what had been done to date on the appraisals and to discuss possible resolutions to the appeals. (Appeal Record, Docs 4 and 14). A follow-up letter was sent to all appellants on March 31, 2000 summarizing what happened at the March 20 meeting. That letter included a form on which the appellants could indicate if they would like to participate in the process outlined at the meeting (Appeal Record, Doc 15). The appellants indicated they wanted to participate in the process. I sent a letter to all appellants on May 16, 2000 transmitting the notes from the March 20 meeting. (Appeal Record, Doc 16). This letter to Bonnie and John Powell was for information purposes because they decided not to pursue a second appraisal. Based on their response, I proceeded with processing their appeal (Appeal Record, Doc 13).

Decision Documentation Addressing Attempts At Appeal Resolution:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 4	Representative 1570 letter acknowledging receipt of appeal and informing appellants of the 3-20-2000 meeting.
Document 14	Attendee list from March 20, 2000 meeting
Document 15	Representative 1570 letter dated 3-31-00 to all appellants summarizing March 20 meeting. Includes a form for the appellant to indicate if they would like to participate in the process.
Document 16	Representative 1570 letter dated 5-16-00 to all appellants summarizing the meeting between the Forest Supervisor and the two appraisers. Includes a form for the appellant to indicate how they would like to proceed with their appeal.
Document 13	Representative 1570 letter dated June 13, 2000 informing appellants the Forest was proceeding with the appeals process.

Decision Documentation Responding to Points of Appeal

Contention 1: The lots are undevelopable. Appellants contend 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. They feel their lots will not accommodate the development of a residence. If a purchased site will not accommodate a residence, the value of the site is less than one that will.

Decision Documentation Addressing Contention 1:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 21, Page 5	Recreation Residence Lot Appraisal Specifications
Document 24	Real Estate Appraisal of Echo Lake Lot 129 Recreation Residence Site – prepared by K. Johnson
Document 30	John Hickey’s Appraisal Review dated 1-13-00

The Recreation Residence Lot Appraisal Specifications, section 2.46, Item 8, clearly state “The 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. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence lots often enjoy a much greater effective area than the permitted area”. (Appeal Record, Doc. 21, page 5). Ms. Johnson believes there may be some market recognition for size. However, it is very subtle and she does not believe the difference can be reliably quantified. She says it should be noted that overall, the subject lot is smaller than the sales. However, the effective size of the subject lots is similar to the sales. In the private subdivisions, the lots are contiguous to one another and usually are bounded on all sides by neighboring lots. The subject lot is adjacent to another Forest Service recreation residence lot on one side. The other three sides abut unpermitted National Forest land.

This enhances the effective size of the lot. Since the Forest Service is not issuing new permits, these lots will remain vacant for the foreseeable future. All of these circumstances enhance the effective size of the lot. In Ms. Johnson's opinion, the effective size of the subject lot is similar to the sales. (Appeal Record, Doc. 24, page 25). This analysis demonstrates the lots **are** developable.

Ms. Johnson considered state and county zoning laws relative to the development of property for parcels under one and two acres in size. Ms. Johnson noted the subject lot has utilities available. "In this regard it is similar to the sales. Septic systems are normal for the area. Because of the lake, there are fairly strong septic system requirements in this area. Some of the sale lots are marketed with accommodations to ensure that septic systems that comply with environmental requirements can be constructed. Because of size, shape, soil conditions or proximity to the lake, the subject lot, as designated on the plat, may not support a septic system that complies with environmental regulations. The Forest Service policy regarding this situation is to allow the permittees to occupy additional Forest Service land back from the lake in order to comply with environmental requirements." (Appeal Record, Doc. 24, page 25). The property is to be appraised under the more stringent of the local zoning or the permit restrictions. There is no applicable local zoning so the permit restrictions are considered to be more stringent. The Forest Service permit restricts the use of the property to a personal recreation residence site. (Appeal Record, Doc 24, page 12). The Recreation Residence Lot Appraisal Specifications section 2.46, Item 9 acknowledge the government often authorizes off lot improvements on non-permitted land in addition to the on-lot residence structure.

John Hickey, Regional Review Appraiser, prepared an Appraisal Review of the Georgetown Lake cabin sites. These sites are in close proximity to the Echo Lake Group. Mr. Hickey states in his Appraisal Review (Appeal Record, Doc 30, Item 6, page 4) that even though the county zoning laws require at least 1.0 acre in Granite County and 2.0 acres in Deerlodge county before sewer and water systems may be developed, the Forest Service recognizes that the permittees enjoy a much larger area than the permitted area. Also, lots were surveyed and permitted much earlier than the local zoning laws were established. Consequently, the "undevelopable lot size" assumption is incorrect. This assessment of the zoning law situation is not specific to the Georgetown group and can be applied to the Echo Lake group.

Contention 2: There is a correlation between the size of the property and the value of the property. However, the Forest Service appraiser found no correlation as such.

Decision Documentation Addressing Contention 2:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 24	Real Estate Appraisal of Echo Lake Lot 129 Recreation Residence Site – prepared by K. Johnson
Document 21, Section 2.46, Item 8	Recreation Residence Lot Appraisal Specifications

Ms. Johnson established in her appraisal that there are some variations in sale prices with regard to lot size. However, in the sales of comparable lots that she researched, the larger lot also had

more tree cover than the smaller lots. She believes there may be some market recognition for size. However, it is very subtle and she does not believe the difference can be reliably quantified. She says it should be noted that overall, the subject lot is smaller than the sales. However, the effective size of the subject lot is similar to the sales. In the private subdivisions, the lots are contiguous to one another and usually are bounded on all sides by neighboring lots. The subject lot is adjacent to another Forest Service recreation residence lot on one side. The other three sides abut unpermitted National Forest land. Since the Forest Service is not issuing new permits, these lots will remain vacant for the foreseeable future. All of these circumstances enhance the effective size of the lot. She felt the effective size of the subject lot was similar to the sales and made no adjustments. (Appeal Record, Doc. 24 page 25). Her reports indicate she followed the direction in the Recreation Residence Lot Appraisal Specifications.

The Recreation Residence Lot Appraisal Specifications state, “The 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. Normally, the unit of comparison in the appraisal of recreation residence lots shall be the lot. Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence lots often enjoy a much greater effective area than the permitted area.” (Appeal Record, Doc. 21).

Contention 3: The Forest Service appraisal is not based upon the fair market value of the rights and privileges authorized under appellant’s permits, and is in contravention of 36 CFR 251.57(1).

Decision Documentation Addressing Contention 3:

APPEAL RECORD REFERENCE	SUBJECT MATTER
Document 22	36 CFR 251.57
Document 21, Section 2.4, 2.6	Recreation Residence Lot Appraisal Specifications
Document 24	Real Estate Appraisal of Echo Lake Lot 129 Recreation Residence Site – prepared by K. Johnson
Document 20 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 28	Sale Data Book for Recreation Residence Sites
Document 29	Standard Appraisal Review Report of Ms. Johnson’s appraisal dated 3-30-98

The appellant’s contention is vague. We interpret this contention to mean that permit restrictions have not been adequately recognized in the appraisal.

The Code of Federal Regulations states “Special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer. The fee will be based upon the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management practices. (Appeal Record, Doc. 22, section 251.57.).

The Recreation Residence Lot Appraisal Specifications direct that “the appraisal shall provide an estimate of fair and equitable cash market value for a typical lot, a lot within a tract or group of

tracts, as if in fee ownership and restricted to a recreation residence lot use, excluding all holder provided improvements on and to the lot”. (Appeal Record, Doc. 21, Section 2.4). The specifications go on to direct that “cash market value shall be based upon the typical lot(s) use as a recreational residence home site and shall be supported by confirmed recent transactions of comparable properties having similar uses, but adjusted for differences from the subject lot(s). (Appeal Record, Document 21, Section 2.46, Item 3).

The Forest Service has given the appellants a rental fee based on the appraisal conducted by Ms. Kim Johnson, who is an accredited rural appraiser and a Montana Certified General Appraiser #487. Ms. Johnson states in her appraisal that “the estate appraised is the unencumbered fee simple title of the typical sites as if held in private ownership, restricted to recreation residence uses, subject to the more stringent of applicable local police powers or permit restrictions of a like nature.” (Appeal Record, Doc. 24, page 8). She defines the scope of the appraisal and discusses the fact that sales, listings, and offers to buy from the subject area were researched. She personally inspected all sales used in direct comparison to the subjects. (Appeal Record, Doc. 24, pages 8, 9). She discusses in greater detail the data analysis she conducted to arrive at the fair market value of the rights and privileges authorized. She found that the private sale covenants, conditions, and restrictions (CC&R’s) and the permit restrictions have many similarities. In most cases, developers, purchasers, and property owners see the CC&R’s as a positive attribute. The property owners view the restrictions as a way of maintaining the quality of the neighborhood and enhancing property values. The existence of the CC&R’s and market acceptance of such restrictions compares to the Forest Service permit restrictions that are considered as part of the appraisal, with one exception. The permit restrictions specify the subject sites can only be used as part-time residences and not as primary residences for the holders of the permits. This difference is reconciled by the fact that purchasers of these sites, as well as most other similar sites in the area, are not usually purchasing primary home sites. Once cabins or homes are built, the sites are used as vacation homes. Since the sites are purchased for part-time use, Ms. Johnson feels that although there are differences between the subject’s permit restrictions and private property CC&R’s, market reactions to the restrictions would be similar. (Appeal Record, Doc. 24, pages 21-22).

Throughout her appraisal, Ms. Johnson cites the sales she used. This sale data is also contained in the Sale Data Book for Recreation Residence Sites (Appeal Record, Doc. 28)

Ms. Johnson has followed the direction outlined in the Recreation Residence Lot Appraisal Specifications and in the Federal Register, Vol. 59, No. 105, page 28730, section 33.3 (Appeal Record, Doc. 20 and 21). Her appraisal is based upon the fair market value of the rights and privileges authorized under the appellant’s permit. Her appraisal was reviewed and accepted by Regional Review Appraiser John Hickey. (Appeal Record, Doc. 29)

Contention 4: The Forest Service Bill for Collection is not based upon an appraisal of the fee simple value of appellant’s lot.

Decision Documentation Addressing Contention 4:

APPEAL RECORD	SUBJECT MATTER
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REFERENCE	
Document 21, Section 2.45	Recreation Residence Lot Appraisal Specifications
Document 24 Page 8,	Real Estate Appraisal of Echo Lake Lot 129 Recreation Residence Site – prepared by K. Johnson
Document 20 Page 1	Federal Register Vol. 59, No. 105, June 2, 1994.
Document 2	2720/5410 letter dated 5-29-98 notifying permittees of appraised values of their lots and associated Bills for Collection
Document 29	Standard Appraisal Review Report of Ms. Johnson’s appraisal dated 3-30-98

The Recreation Residence Lot Appraisal Specifications identify the purpose of an appraisal: “The appraisal purpose is a cash market value estimate of the fee simple interest of the National Forest System effective land area authorized by a permit, but without consideration as to how the permit would, or could, affect the fee title of the lot(s) within a recreation residence tract, or the designated typical lot(s) within a recreation residence tract grouping.” The specifications go on to say “Estate appraised is the unencumbered fee simple title of the typical lot(s) as if held in private ownership, zoned to a recreation residence use, and subject to all applicable local governmental police powers. Restrictions imposed by the permit itself must be compared to the local controls on private land and proper adjustments made accordingly.” (Appeal Record, Doc. 21).

The appellants were notified of the appraised value of their lot. (Appeal Record, Doc. 2). The Bill for Collection (Appeal Record, Doc. 2) sent to the appellant reflects the fee simple value of their lot that is based on the appraisal conducted by Ms. Kim Johnson, who is an accredited rural appraiser and a Montana Certified General Appraiser #487. Ms. Johnson states in her appraisal that “the estate appraised is the unencumbered fee simple title of the typical sites as if held in private ownership, restricted to recreation residence uses, subject to the more stringent of applicable local police powers or permit restrictions of a like nature.” (Appeal Record, Doc. 24, page 8).

Ms. Johnson followed the direction outlined in the Recreation Residence Lot Appraisal Specifications and in the Federal Register, Vol. 59, No. 105, page 28730, section 33.3 (Appeal Record, Docs. 20 and 21). She appraised the unencumbered fee simple title value of the typical sites. Her appraisal was reviewed and accepted by Regional Review appraiser John Hickey. (Appeal Record, Doc. 29). Ms. Johnson achieved the purpose of the appraisal by following the Recreation Residence Lot Appraisal Specifications and the direction in the Federal Register.

Should you have questions regarding the information presented in this letter please contact Cindy Tencick, Appeals and Litigation Coordinator, at (406) 683-3930.

/s/Peri R. Suenram for
 JANETTE S. KAISER
 Forest Supervisor

Enclosure: Echo Lake Recreation Residence Appeals Record Index

cc:

Bonnie and John Powell

ECHO LAKE

RECREATION RESIDENCE APPEALS

APPEAL RECORD DOCUMENTATION

VOLUME 1

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8	4/6/00	Letter from USFS to appellants re: grouping appeals for one consolidated appeal decision	2
9	3/24/00	Letter from USFS to appellants re: grouping appeals for one consolidated appeal decision	1
10	5/3/00	Letter from USFS to Linda Lombardi transmitting names of appellants	1
11	5/23/00	Memo to Appeal Deciding Officer requesting extension to 8/15/00	2
12	5/23/00	Letter from USFS to appellants notifying	1

		them request for an extension was granted	
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SECTION E – APPRAISAL CORRESPONDENCE

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19	12/18/98	Letter from USFS to Tauno Murto re: appraisal changes to his lot	2

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VOLUME 2

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