

Old Orchard Beach Board of Assessment Review

Hearing #1: King H. Weinstein, 6 Millbrook Drive, Old Orchard Beach, ME, Map 101, Block 1, Lot 15-3

Hearing #2: New Heritage Builders Inc., 155 Saco Avenue, Old Orchard Beach, Maine, Map 207, Block 2, Lot 12-3

Hearing #3: Ronald & Lynda Regis, Tax Map 103, Block 6, Lot 602, 0 Ross Road; Tax Map 103, Block 6, Lot 603, 0 Ross Road; Tax Map 103, Block 6, Lot 604, 0 Portland Avenue; Tax Map 103, Block 6, Lot 605, 0 Ross Road; and Tax Map 103, Block 6, Lot 606, 0 Ross Road.

May 16, 2011

Present: Kerri-Lyn Hodgkins, Margaret Michaels, Michelle Parkinson, Robert Jolicoeur, Robin Dube – Board of Assessment Review

Taxpayers: King Weinstein and Ronald Regis (Board member Lucien Huot was present in the audience, but did not participate due to potential conflict of interest).

George Greene, Town of Old Orchard Beach Assessor

William DiDonato, Town of Old Orchard Beach Deputy Assessor

Robert Crawford Esq., representing the Board of Assessment Review

Kim McLaughlin, Secretary, Board of Assessment Review

Chair Michelle Parkinson read the opening remarks [attached].

The Board agreed to hold Hearing #2 first, believing it to take less time than Hearing #1.

The taxpayer, King Weinstein, began by explaining to the Board the location of 155 Saco Avenue, and that it is an office building that currently houses, amongst other businesses, a dentist office.

Mr. Weinstein stated a condominium declaration was recorded in 1987. The development included more land than what was needed for the development at the time, so they reserved the right to build another building in the future. He then showed the Board (which they had in their packets), the Declaration of Condominium [Exhibit A]. He read the third page, Article V, first paragraph, highlighted in yellow, “Declarant reserves the Development Right and option until the seventh (7th) anniversary date of the recording of this Declaration...” He stated those rights expired on September 6, 1995, and that he has no more rights to build there. The declarant rights went back to each owner respectively. He just recently received a tax bill, and believed that because the development rights had expired, that New Heritage Builders should not have been billed.

Mr. Weinstein provided Chair Parkinson with a copy of the property record card printed 10/10/2010 that showed the Development Rights were not taxed [Exhibit B]. He then provided a copy of a second property record card printed 02/04/2011 that showed the Development Rights were now taxed [Exhibit C].

Chair Parkinson asked Mr. Weinstein to describe the land they set aside. Mr. Weinstein provided a copy of the Planning Board approval, and took a pen and outlined the land in question [Exhibit D].

Mr. Weinstein stated he went through this in Wells, and it was determined there was no interest to be taxed.

Board Member Robin Dube arrived at this point in the meeting, 6:50 P.M.

Chair Parkinson inquired of Mr. Weinstein if he owned the land.

Mr. Weinstein replied that common land is owned by the condominium owners. It would be similar to a swimming pool being included in the unit values.

Mr. Greene, the Assessor, then provided a copy of the property record card, print date 05/04/2011, showing the "New Construction at Lighted Intersection" MLS listing [Exhibit E]. He informed the Board he saw Mr. Weinstein's advertisement. Mr. Greene's purpose for assessment is convertible real estate. The value in the land to develop it, and he advised Mr. Weinstein of that in his letter to him. He further stated Mr. Weinstein is 50% owner in the condominiums and Mr. Contois is the other 50% owner. Mr. Greene then provided the Board with a copy of an e-mail from David Ledew, Maine Revenue Services, dated 12/9/2010 [Exhibit F]. He stated that "as an approved right to subdivide adds value to the land, development rights also add value to the land."

Board member Dube asked Mr. Weinstein if anyone planned on developing this land in the future, to which Mr. Weinstein replied that he had not obtained any permits yet. He stated that parcel is just one parcel of land and that's common land owned by the six condominium owners. The land is part of their value. He stated he placed that advertisement on the assumption he could get financing and permits. If approved, he would need to amend the condo docs, again, with the condo owners' approval.

Chair Parkinson inquired of Mr. Weinstein if he believes this is a double assessment, to which Mr. Weinstein replied in the affirmative, that it's already taxed to the other units.

Board member Dube inquired of Mr. Greene why this property is being taxed separately.

Mr. Greene showed the advertisement, again. He said any condo project has common area. He assigned a value based on the condo documents and the advertisement. There is convertible real estate and it should have a value.

Board member Dube asked why it is being taxed as residential property, to which Mr. Greene responded that is what was approved in the original plan before the Planning Board.

Mr. Weinstein said that he advertises many different properties that are not built yet. The property in question has been purchased by KRE Properties, so even if the Town taxed it, it would not be to New Heritage Builders. They are not the taxable entity.

Mr. Greene stated that he has not seen a plot plan or deed that states that it becomes common area when the declarant rights expire.

Attorney Crawford advised the Board that they do not have the entire Condo Docs before them, so he doesn't want to render an opinion before reviewing the full documents. He needs to know if the development rights hadn't expired, would the Town have the right to tax those rights to New Heritage Builders? Secondly, what happens when the condo docs do expire? Is the value recognized in the common elements?

Mr. Greene stated that if this area can never be developed and is now part of the common ownership, the value is dispersed to the six owners evenly. Mr. Greene informed the Board he could not locate where it states who has the right to build right now. He could not find an amended plan in Alfred [York County Registry of Deeds].

Mr. Weinstein asked Mr. Greene if he had a deed to the property, to which Mr. Greene responded that he doesn't. If the wrong person was billed, he would issue an abatement and issue a supplemental tax bill to the other owner.

Attorney Crawford stated that Mr. Weinstein has the burden of proof that it is overly or improperly assessed. The Board can solicit up to date Condo Docs from the taxpayer and continue the proceeding to review these documents and see if there is taxable real estate. This hasn't been answered at this meeting.

Mr. Weinstein stated he was willing to agree to a continuance to provide the Condo Docs to Attorney Crawford for review, in the hopes of resolving this issue.

Board member Jolicoeur motioned, seconded by Board member Dube to table this agenda item to their May 23rd, 2011 meeting at 6:30 p.m., at the Police Station.

VOTE: Unanimous.

At 7:30 p.m., Chair Parkinson opened the Hearing on 6 Millbrook Drive, stating this was a remand from Superior Court [Exhibit G].

Mr. Weinstein provided the Board with a sheet of paper entitled "How is Property Assessed?" [Exhibit H]. He stated this is a one-acre lot in Millbrook Estates, with a value of \$135,800. He provided the Board, as well, with a compilation he put together comparing the subject property to that of other properties, including sold prices and average lot prices, as well as other assessed valuations [Exhibit I]. He stated a lot at 7 Pond View Road sold for \$89,900 in October of 2009 (he also provided the MLS listing showing the property sold), stating it was on the market for 140 days, and it's .93 acres [Exhibit J].

He also provided and advised the Board of other properties, vacant land at the corner of Ross Road and Portland Avenue, that sold after being on the market for 200 days. One parcel was 1.5 acres and the other was 2.14 acres, and both sold for \$37,500 [Exhibit K]. He told the Board that listings are “wish lists”, but gave the Board some other examples of properties with similar covenants—two one-acre lots on Camelot Drive listed for \$75,000 and another lot on Camelot Drive, 1.5 acres, for \$75,000 and has been listed for 481 days [Exhibit L]. He also provided the Board with a copy of a property record card from Vision Appraisal for 19 Miles Avenue, along with a GIS printout showing the location of the property. He stated this property sold for \$98,000, and it is located closer to the water than his property [Exhibit M].

Mr. Weinstein then submitted a copy of his property record card to the Board [Exhibit N].

Board member Hodgkins inquired of Mr. Weinstein if there were any comparables for Millbrook Estates.

Mr. Weinstein replied that nothing had ever sold. He then showed the values of the other properties on the Ross Road, Dunegrass and Portland Avenue, all ranging in the \$70k to \$80k range.

Board member Dube inquired what Mr. Weinstein’s lots are selling for.

Mr. Weinstein responded that currently there is an \$89,900 list price.

Assessor, George Greene, then gave the Board a packet, including the letter of denial to the applicant, dated 11/18/2009 [Exhibit O]. He then spoke about the report from Vision Appraisal [Exhibit P]. In 2008-2009, there weren’t a lot of land sales. He showed from the packet three arm-length transactions for Pacer Avenue (\$110k), Portland Avenue (\$85k) and 19 Miles Avenue (\$98k) [Exhibit Q]. He noted the land on Portland Avenue sold for \$85k, but he had a value on it of \$83k. He said that Mr. Weinstein gave evidence of three qualified sales through December, 2008; however, a few sales that Mr. Weinstein mentioned were after 2009. Mr. Greene then showed the Board the advertisement for the 9 lot Millbrook Subdivision [Exhibit R]. He stated that the Town does not have very many high-end subdivisions. This subdivision has granite curbing, and is a gated community. He had to go outside our community to obtain comparable sales. He provided the Board with a comparable in Days Landing in Biddeford, stating it sold for \$135k just before April 1, 2009 [Exhibit S]. It is not in a gated community, but it is near the water, stating it is a good comparable. The property is a 7/10 of an acre lot. Mr. Greene provided the Board with a multi-page packet of MLS listings, dated 12/21/2009 [Exhibit T]. He then provided the Board with a land curve analysis [Exhibit U]. He stated that Mr. Weinstein spoke of Camelot Estates. He asked the Board to take a trip to Camelot Estates and then compare that to the applicant’s property. Mr. Greene then provided the Board with a print out of various properties surrounding the applicant’s property, to include their MBLU and lot value [Exhibit V].

He said that more acreage does not necessarily equate to more value. He pointed out that Mr. Weinstein stated that an adjacent lot was listed for \$69k in 2009, when it was actually listed for \$80k. He said that the Town has 51 acres on Milliken Mills Road, but it can never be developed (per deed requirements), so the value can't be compared. He said they shouldn't compare 19 Miles Avenue because although it is close to the beach, the owner is looking at the Milliken Street municipal parking lot. He also pointed out that Mr. Weinstein spoke of the value of the Dunegrass lots, stating that was subjective, because it's valuable if you're a golfer.

Deputy Assessor, William DiDonato, stated that the Ross Road lots were estate sales. They were not arms-length transactions.

Mr. Weinstein stated he was familiar with Days Landing in Biddeford, informing the Board it is located by the University of New England, and was developed by a Judge. He said that was a much nice subdivision than his. He told the Board his property is 60% higher than anywhere else, and he is not on public sewer. He said there is no demand for high end lots in Old Orchard Beach. They're not selling.

Mr. Greene pointed out that the \$89,900 asking price for the applicant's property was not set at that price on April 1, 2009, stating this must have been a recent change. He told the Board, what better comparable than itself. In 2005, it sold for \$400,000. None of the other comparables have more infrastructure than Millbrook Estates.

Chair Parkinson inquired if there were sewer and sidewalks in Millbrook Estates.

Mr. Weinstein stated there isn't sewer, but there are sidewalks. The road is not paved beyond the first cul-de-sac, and wasn't paved at the time of the assessment.

The hearing was closed and the Board moved to deliberation at 8:22 p.m.

Chair Parkinson motioned, seconded by Board member Dube, to table applicant, Ronald and Lynda Regis, to June 14th, 2011 at 6:30 p.m.

VOTE: Unanimous.

The Board then began deliberation on King Weinstein's application.

Chair Parkinson stated his property is assessed a lot more than his neighbors; however, she had the same feeling as last time, that there aren't other properties similar to his.

The applicant, King Weinstein, left the meeting at 9:38 p.m.

Board member Dube stated he did not meet the overvaluation claims. The aerial photo of Millbrook Estates shows this as a high-end neighborhood.

Board member Hodgkins stated the Assessor can be within 20% accuracy with the ratios, and stated it's fairly assessed.

Board member Michaels stated the taxpayer did not meet his burden.

Board member Jolicoeur cautioned the other Board members about being influenced by the newer values set for the property, that were not in effect for the tax year being discussed. He felt the Assessor was very much in the ballpark, stating the Assessor's numbers are solid.

Chair Parkinson stated the facts haven't changed, reiterating her same point of view from the last time the Board deliberated this application, and found the applicant had not met his burden of proof.

Board member Michaels motioned, seconded by Chair Parkinson that the taxpayer did not present evidence to the Board to accept as credible that impeaches the validity of the assessment.

VOTE: Unanimous.

Board member Michaels motioned, seconded by Chair Parkinson that the taxpayer did not prove unjust discrimination.

VOTE: Unanimous.

This meeting ended at 9:53 p.m., being recessed until Monday, May 23rd, 2011 at 6:30 p.m.

Respectfully Submitted.

Kim McLaughlin
Town Clerk

I, Kim McLaughlin, Town Clerk of Old Orchard Beach, do hereby certify that the foregoing document consisting of six (6) pages is a true copy of the original Minutes of the Board of Assessment Review Meeting held May 16, 2011.

Kim M. McLaughlin