

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

May 23, 2011

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

George Greene, Town of Old Orchard Beach Assessor

Kim McLaughlin, Secretary to the Board of Assessment Review

Chair Michelle Parkinson read the opening remarks [attached], stating that the meeting would not be audiotaped this evening.

The applicant for Hearing #1, King Weinstein, was not present this evening. The property was the subject of a hearing by the Board of Assessment Review on May 16, 2011. At that meeting the Board had discussed the Findings of Fact and would be completing the Findings of Fact this evening and announcing a decision.

The secretary, Kim McLaughlin, typed the Findings of Fact from the last Board Meeting, and gave the Board the Findings of Fact to review. The Board reviewed the Findings of Fact for several minutes. The Board agreed the Findings of Fact are what they stated on May 16, 2011.

Board member Jolicoeur motioned, seconded by Board member Michaels to accept the Findings of Fact for King H. Weinstein, 6 Millbrook Drive, Old Orchard Beach, Maine, denying his request for an abatement appeal [Exhibit A].

VOTE: Unanimous.

Chair Parkinson then signed the Findings of Fact, and closed that hearing.

Chair Parkinson then opened the second hearing of the evening, New Heritage Builders Inc., 155 Saco Avenue. At the last meeting, the Board tabled this item for the Town Attorney, Robert Crawford to obtain the full Condominium documents from the taxpayer and review them. He was then to provide the Board with his recommendation. Attorney Crawford e-mailed a memo, dated May 23, 2011, to the secretary, Kim McLaughlin, who provided the memo to the Board. The Board took several minutes to review the memo. Summarily, the memo from Attorney Crawford stated that the development rights for the declarant expired seven years from the date of filing. The filing date in the York County Registry of Deeds was on September 13, 1988, so the rights expired on September 13, 1995. Therefore, he recommends the abatement be granted.

Chair Parkinson opened the hearing. The applicant, New Heritage Builders Inc., who was represented by King Weinstein at the last meeting, was not present this evening. The Assessor was then given the opportunity to present his case.

Assessor, George Greene, stated he read the memo from the attorney as well, and he stated he was fine with it. He stated he believes there is value there, and at the time of the assessment, he believed there were active development rights. He had provided the Board of a photocopy of the property record card, as well as the photocopy of the MLS listing for the land last dated 11/7/2010. He also read the condo docs today, about 80 pages. Once the declarant rights are gone after seven years, the property rights are then converted back to the owners of each of the condos/condo association.

Board member Dube asked if the property is part of each of the condominium's taxes, to which the Assessor replied that common areas are included in the taxes of the condo owners.

Board member Dube asked the Assessor if this is the only property that he sends out that type of tax bill to, and the Assessor replied that it was the only property in that category.

Mr. Greene responded to King Weinstein's assertion to the Board in his request for a tax abatement, that "the State of Maine states development rights are not separately taxable". Mr. Greene read the section of Attorney Crawford's memo, "...Section 1601-105 (c) ...directs that "any portion of the common elements for which the declarant has reserved any development right to add real estate to a condominium or to withdraw real estate from a condominium, shall be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes".

The Board agreed with Attorney Crawford's recommendation to grant the appeal, and prepared the Findings of Fact, agreeing that a decision would be made at tonight's meeting.

Because the taxpayer was not present, the Board reviewed his letter to the Board, and wrote down the three concerns he raised in his letter: 1) that the development rights had expired and were not taxable; 2) that New Heritage Builders Inc., was not in the chain of title; 3) the State of Maine states development rights are not separately taxable [Exhibit B].

The Board included the photocopy of the Declaration of Condominiums he provided in the packet to the Board (Exhibit B), and the Warranty Deed (Exhibit C), in the documents he used to support his concerns.

The Board then discussed the Assessor's responses to the taxpayer's position, stating the Assessor believed there were active development rights on the land, and that he did not separately tax on the development rights, that he taxed on the impact of the development rights to the remaining land of the condominium project.

The Assessor had provided a copy of the property record card from the Town's Vision Appraisal software program, including a copy of the MLS listing. (Exhibit D) was last updated 11/7/2010. The Assessor had also provided a photocopy of the e-mail from David Ledew, Maine Revenue Services, to George Greene, December 9, 2010 (Exhibit E).

The Board supported their findings by attaching Attorney Crawford's memo to the Board (Exhibit F). The memo summarily stated that the declarant rights expired September 13, 1995, so as of the tax year April 1, 2010, the reserved interests were expired.

Board member Jolicoeur motioned, seconded by Board member Dube to accept the Findings of Fact as outlined, and to authorize the secretary to type the minutes and have Chair Parkinson sign the Findings of Fact.

VOTE: Unanimous.

The meeting was then adjourned at 7:25 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 three (3) pages is a true copy of the original Minutes of the Board of Assessment Review Meeting held May 23, 2011.

Kim M. McLaughlin