

Old Orchard Beach Board of Assessment Review

Hearing #1: 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.

June 14, 2011

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

Ronald Regis, Taxpayer

George Greene, Town of Old Orchard Beach Assessor

William DiDonato, Town of Old Orchard Beach Deputy Assessor

Kim McLaughlin, Secretary to the Board of Assessment Review

Chair Michelle Parkinson read the opening remarks [attached].

The Secretary, Kim McLaughlin, passed out a copy of the 80B appeal ruling from York County Superior Court, Docket #AP-09-051 [Exhibit A].

The applicant for Hearing #1, Ronald Regis, provided a packet of information to each Board member and the Secretary. He then read a letter to Bergen & Parkinson, LLC that Mr. Regis wrote, dated October 19, 2010 [Exhibit B], which was part of that packet. He stated this had been a \$185,000 cash sale, plus over \$15,000 in fees that he and his wife contributed. He said all of that was shattered the day the lawsuit was filed.

Mr. Regis then proceeded to explain another page in the packet, the Town of Old Orchard Beach GIS printout, dated October 22, 2007 [Exhibit C], showing the abutters to his property. He said the Town told him that due to a computer glitch, the abutters weren't notified. He told the Board that "King" and "Mike" did know because they were at the meeting. He then provided the Board with a copy of an e-mail from Gary Lamb, Town Planner, to Jack Turcotte, Town Manager and Louise Reid, Assistant Town Manager, pointing out item #4, reference "King and Mike" being at the site walk, and they were notified [Exhibit D]. Mr. Regis also provided to the Board a letter to Attorney Pattinson from Gary Lamb reference the mediation [Exhibit E]. He also provided to the Board, a copy of the "Complaint for Review", filed by Attorney Neal Weinstein, with Mr. Regis's notes in the margin [Exhibit F].

Mr. Regis then explained the October 8, 2009 minutes in which his subdivision was an agenda item [Exhibit G], also in this packet. He pointed out the fifth page, stating the public hearing was closed at 8:27 p.m., and the final review was tabled.

Mr. Regis then referred to the Planning Board Findings of Fact, dated November 12, 2009 [Exhibit H]. On page one, he highlighted a section in pink that he then read to

the Board, “WHEREAS the Planning Board held a public hearing on October 8, 2009 and tabled the item without prejudice.” He said that was incorrect, that the public hearing was not tabled.

Mr. Regis then read an e-mail from Attorney Chris Vaniotis (attorney for the Town of Old Orchard Beach), and Mike Nugent (Code Enforcement Officer for the Town of Old Orchard Beach), dated January 7, 2011 [Exhibit I]. Mr. Nugent asked Attorney Vaniotis the question Mr. Regis had reference the public hearing being closed and not tabled, and the fact the Planning board had tabled final action until November 2009 meeting. Mr. Vaniotis’s response was that he didn’t “see any inconsistency between the findings and the minutes”.

Mr. Regis stated that the Plaintiffs used information from the Planning Board minutes to file a lawsuit. He stated the Town is at fault, and that Gary Lamb (Town Planner) admitted the error. The case was just dismissed recently and Mr. Regis was able to now list the property, again. He had to wait because he didn’t have clear title because it was under litigation.

Board member Dube asked if it was dismissed on May 12, 2011, to which Mr. Regis responded in the affirmative.

Board member Dube then asked Mr. Regis if he couldn’t sell the property till the case was dismissed, to which Mr. Regis responded that she was correct. The bank would not loan money because of the lawsuit.

Board member Dube asked what the final action was, to which Mr. Regis stated the minutes showed the public hearing was tabled, so should’ve been notified of the second public hearing and they weren’t.

Mr. Regis then referred to a section of inter-office notes he obtained from his file in the Planning Office, dated May 21, 2010 [Exhibit J], that he highlighted in pink, “Town staff screw-up has caused”.

Chair Parkinson stated Mr. Regis has explained the most important points, and asked whose notes they were that he obtained, to which Mr. Regis stated they were Attorney Vaniotis’s, Gary Lamb’s, and the Town Manager.

George Greene, Assessor for the Town of Old Orchard Beach then presented his case. He handed out a packet to the Board. He said Mr. Regis has five parcels before the Board, and that he is asking that the value be zero—no value whatsoever. Mr. Greene agrees the loss of the sale was unfortunate, and the Town has acknowledged their mistake; however this is a civil matter and not an assessing matter. It’s not discriminatory, and the bill was not sent to the wrong party. He said there isn’t an error in valuation. He provided the Board a printout from Vision Appraisal on a property that Mr. Regis had sold December 10, 2008, showing that in 2010 the property was listed at \$83,000 and in 2011 the property assessment was dropped to \$64,700 [Exhibit K]. He

acknowledged some encumbrances or problems with the land. He dropped the valuation by 20%, acknowledging the encumbrance on the lots of the subdivision. It was his opinion, that although this property was not owned by Mr. Regis, it may be difficult to sell the lot because of the pending lawsuit. Because of the Town's acknowledged missteps, the value was not there. He, also, in the same manner, reduced the lots that are being appealed, by the same 20% reduction because of said encumbrance. Mr. Greene also gave the Board a printout from Vision Appraisal, October 6, 2010 print date, of the MBLU 103-6-603, showing the drop in the assessed valuation [Exhibit L]. He then provided the Board with an MLS listing for one of the subject properties, dated June 23, 2010, showing the property is still on the market for \$95,000, during the litigation, at a far higher value than the assessed value [Exhibit M]. He then provided a land curve analysis sheet that he has provided to the Board in the past [Exhibit N]. He then passed out a color map showing the MBLU's, assessed values and selling price/date (if applicable) of the properties and surrounding properties. He explained that MBLU 103-6-601 sold for \$85,000 in December of 2008 [Exhibit O].

Board member Dube asked the difference between vacant lots and non-buildable lots.

Mr. Greene gave the Board the same letter from Atty. Bryce Ingraham to David Goyet, VP, Saco & Biddeford Savings Institution, dated September 16, 2010 [Exhibit P]. He had highlighted the first sentence in the second paragraph, "It is my opinion that the title to the new lot is marketable, however, it may not be buildable because of pending litigation". Mr. Greene said he can show the Board dozens of cash sales in Town. Maybe a bank won't supply a loan, but he allowed for that in his analysis of \$64,000. The land does have value. He hasn't seen other sales that show the subject land is inconsistent with others. The Planning Board minutes have nothing to do with this. It is a civil matter. When Mr. Regis came into the Assessor's Office, they have a discussion, and his words to Mr. Greene were that he did not have a problem with the assessment.

Mr. DiDonato, the Assistant Assessor, concurred to the Board that he was present at the meeting and that is what Mr. Regis advised them.

Mr. Greene stated the Town acknowledged their mistake, and it's unfortunate that it may have caused Mr. Regis to lose a sale, but Mr. Greene allowed for some of that problem by lowering the assessed value.

Mr. Regis stated the drop in assessed valuation was not due to the litigation, but a drop in the market value. He stated his properties are currently being marketed for less than the Town valuation today. His attorney told him to go through this abatement process on his property, and that's why he's here tonight.

Mr. Greene asked Mr. Regis whose notes he had in his packet, who wrote them.

Mr. Regis responded that they were in his property file in the Planning Office.

Mr. Greene stated the letter is quoting Mr. Regis, not the Town. This is what Mr. Regis told them—Town Council, BOA, these are questions. The Board of Assessment Review has the authority to grant abatements after being denied by the assessor. These notes only direct what can possibly be done. The Board of Assessment Review must decide if an abatement meets the criteria—discrimination, fraudulent, error, etc. Referring to what Mr. Regis said earlier in the meeting about the Assessor dropping the value of his lots because of market value and not the litigation, Mr. Greene stated he did not lower all lots in Town. The mill rate would've gone up a dollar. He specifically chose these lots because they did lose some market value due to the litigation.

Chair Parkinson asked Mr. Regis if he understood what Mr. Greene was saying. Although these are problems concerning litigation, these are not concerns the Board of Assessment can address.

Mr. Greene stated the Poverty Abatement process goes through the Town Council, and is based on financial inability to pay, not on valuation.

Chair Parkinson advised Mr. Regis that his grief is not with the Board of Assessment Review. He should file for a poverty abatement if he cannot afford the taxes on the property. It doesn't meet the Board of Assessment Review criteria for granting abatements.

Mr. Regis informed the Board that no one could obtain a clear title to the properties, even for a cash sale.

Mr. Greene responded, stating Mr. Regis was going to have a cash sale; however, the potential purchaser wanted to start immediately and he didn't know how long the litigation would take. A cash sale could still have occurred.

Board member Dube inquired of Mr. Greene how he would value the property if it wasn't buildable, to which he responded that all of these lots are buildable. She then asked him for a hypothetical.

Mr. Greene stated he didn't know why Attorney Ingraham said that "it may not be buildable because of pending litigation". Mr. Greene had asked Michael Nugent, Town of Old Orchard Beach Code Enforcement Officer, if someone purchased a lot would the Town issue a building permit, to which Mr. Nugent had informed him that the Town would issue the permit. Mr. Greene further stated to the Board that the Court wasn't holding up the sale. The buyer just didn't want to bother with it. It was bad timing. The Town does have other lots with restrictions in Town, i.e. water restrictions, so the value is less, but it is still there. When Mr. Regis put money into drawings, etc, it all added value to the property.

Chair Parkinson asked Mr. Regis if the lawsuit was still pending, to which Mr. Regis responded that it wasn't.

Chair Parkinson asked Mr. Regis if he had an attorney, to which he responded that he did, but his Attorney had told him he wouldn't lose this case before the Board.

Board member Dube asked Mr. Regis how many lots were involved in the \$185,000 sale, to which he responded, "three".

Board member Dube asked Mr. Regis that technically he has lost time and court fees.

Mr. Greene asked Mr. Regis how much each of the lots are selling for currently.

Lucien Huot, the real estate broker for Mr. Regis, advised the Board the lots are currently marketed for \$62,500 to \$70,000. One lot that is 5.48 acres, in back, that can have two houses on the property, was marketed for \$160,000. It is now marketed for \$130,000.

Chair Parkinson stated the Board could not address Mr. Regis's concerns, to which Board member Dube concurred.

Mr. Greene stated that as a taxpayer, he did have the right to appeal to the Board of Assessment Review.

Mr. Regis stated he was before the Board because he feels the value is zero.

Mr. Greene responded he feels it does have value, and asked why Mr. Regis chose to take his properties off the market at the time.

Mr. Regis stated he removed the properties from the MLS because there wasn't a lender that would lend money and no one could obtain clear title.

Mr. DiDonato advised that Board that the Assessor sets the value as of April 1<sup>st</sup> of any year. After April 1<sup>st</sup>, it is out of the Assessor's control. He was present when Mr. Nugent advised Mr. Greene that anyone could take out a building permit. The Assessor's Office, by law, has to acknowledge a subdivision as of April 1<sup>st</sup> of a year. Mr. Regis did not file his three lots with the Registry of Deeds, so he thought he would not be taxed separately on them, but the Assessor's Office had to acknowledge the subdivision filed with the Planning Board.

Board member Dube stated that on September 16, 2010 the Plan was recorded with the Registry of Deeds. Attorney Bryce Ingraham did state the property is marketable, that the land is worth something.

Mr. Huot stated that, as the broker, there was an encumbrance on the title. No one he talked to would finance the sale. The suit came against the Town for no notification. The Town took a back seat and Mr. Regis took the flack. Superior Court ordered arbitration. Mr. Regis had to remove his conditional uses in the rural zone as part of the arbitration. Lot #5 is being marketed for \$62,500 today, and is restricted to a 1,400 square foot house. Lot #6, on the corner of Portland Avenue and Ross Road, is restricted

to a 1,600 square foot house. Lot #3 has the same restrictions. Lot #4 has no restrictions. These properties would have been worth more if a person could build a larger home. Mr. Regis also had to agree to a 100 foot setback from hot top.

Mr. Greene asked Mr. Huot if the lot he sold for Mr. Regis was one of the lots in the litigation, to which Mr. Huot responded that it wasn't part of the litigation.

Mr. Greene stated it was part of the subdivision. He asked Mr. Huot if there were any of these lots for sale after April 1, 2010. Mr. Huot stated they were taken off the market 18 months ago.

Mr. Greene inquired of Mr. Huot whose decision that was, to which Mr. Huot responded that it was Mr. Regis's decision.

Mr. Greene asked Mr. Huot if the property had not been taken off the market, could he have purchased it as a cash buyer, if Mr. Huot disclosed that it was under litigation.

Mr. Huot responded that if a person were to pay cash and was willing to ride out the storm, he would have to look at his files and see.

Mr. Greene stated that Mr. Regis chose not to market these properties; it's not that they're not marketable.

Mr. Huot responded that he talked to lenders and unless the seller can provide clear title, they will not loan the money. Lots #3, #5 and #6 were ready to go, and then the buyer said they couldn't get financing.

Chair Parkinson stated that she understood someone had been harmed, but rather than the Board of Assessment Review acting on that, Mr. Regis should seek legal recourse. The Board is very limited as to how they can respond to this situation. Mr. Regis would need to meet one of the three legal requirements, which he doesn't. She informed him that his damages go beyond the scope of the Board of Assessment Review. There is the potential loss of \$185,000 [Exhibit Q], Mr. Regis's work, interest, etc, but the Board of Assessment Review is not the place to be compensating that. The reduction in the Assessed value of his properties by the Assessor was not done town wide. It was done for Mr. Regis due to the litigation. She told him that if he would've sold it to her for \$185,000, then it's marketable.

Mr. Regis stated that he would've sold it to her, but it would be stupid on her part to purchase it.

Board member Dube stated this is a civil matter. She then asked Mr. Regis whose notes were written on the side of the Planning Board minutes he presented to the Board, to which he responded they were his.

Chair Parkinson stated Mr. Regis has a good civil case, but the Board of Assessment Review is not the place to pursue it.

Mr. Greene stated the Town acknowledged they made a mistake, but it wasn't intentional. It was a GIS computer glitch. Maybe they should have double checked and that was acknowledged, but the error was found out and that's what triggered the lawsuit. The encumbrance was also an acknowledgement. It was Mr. Regis's decision to take the properties off the market. Someone could have purchased those properties. It would have been a business choice. Just because the properties were taken off the market doesn't mean they're not marketable.

Mr. Regis stated the Findings of Fact were wrong, but Attorney Vaniotis refused to correct them. He stated he has liens against his property now.

Board member Dube asked Mr. Regis if he has the properties marketed now, to which he responded that he did.

Chair Parkinson stated he should apply for a Poverty Abatement.

Mr. Greene stated to Mr. Regis that Mr. Regis had told him he didn't have a problem with the assessment, to which Mr. Regis admitted that he told him that, and that his problem is with the litigation.

The Public Hearing was closed at 8 p.m. Deliberations by the Board began at that time.

Board member Dube asked Mr. Greene now that the litigation is over, will the value go back up, to which Mr. Greene stated he is not done with the final numbers for the Town Valuation as of yet.

Board member Dube asked Mr. Greene why he chose to reduce the property by 20%.

Mr. Greene stated it was an arbitrary number. He was trying to be fair. How do you put a value on an encumbrance? The property values in the surrounding area have dropped since the original assessment, so he will probably not raise the values on the property to where they were originally.

The Board then reviewed the Findings of Fact, and agreed that Mr. Regis made his presentation to the Board because he felt there was no value on the properties due to the pending litigation; that the Town did not notify the abutters of the public hearing, which brought on the litigation; Mr. Regis was advised by someone to apply to the Board of Assessment Review for an abatement; and no one was able to obtain financing to purchase the property.

The Board agreed that the Assessor's presentation was that Mr. Regis was not discriminated against, nor was the wrong party billed; that the Assessor reduced the assessed value 20% because of the pending litigation, conceding that the litigation is a

problem; that Mr. Regis admitted he did not have a problem with the assessment in a meeting with the Assessor and Deputy Assessor; and that a cash sale could have occurred as long as everything was disclosed, so there is value, even though financing may not have been able to be obtained.

The Board agreed that there weren't overvaluation claims, discrimination claims or claims based on fraud or technical illegality.

The Board stated the letter from Attorney Ingraham said the property was marketable; Mr. Regis admitted he would have sold the lots for cash; the property was not overvalued, because the Assessor dropped the value 20% due to the litigation; and the assessment was not fraudulent, dishonest, illegal or discriminatory.

Mr. Regis's original packet to the Board of Assessment Review that he brought to the Town Clerk's Office on January 13, 2011, consisted of the Fiscal 2011 annual tax bills for the subject properties, the application for abatement for each property, a letter from Mr. Regis to the Board dated September 26, 2010, the letter from Attorney Ingraham to Mr. Goyet, dated September 16, 2010, and a letter from Ken Gilbride, Bangor Savings Bank, to Mr. Lucien Huot, dated September 30, 2010. [Exhibit R]

The Board agreed to meet on June 22, 2011 at 6:30 p.m. to render a decision on the application.

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 eight (8) pages is a true copy of the original Minutes of the Board of Assessment Review Meeting held June 14, 2011.

Kim M. McLaughlin