

MICHAEL A. ROCQUE SR. et al.

v.

TOWN OF CHINA

Submitted on Briefs December 13, 2005
Decided January 13, 2006

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,
and LEVY, JJ.

MEMORANDUM OF DECISION

Julie E. Rocque, owner of a parcel of property in China, and her husband, Michael A. Rocque Sr., appeal the decision of the Superior Court (Kennebec County, *Studstrup, J.*) denying their appeal filed pursuant to M.R. Civ. P. 80B, of a decision by the Town of China Board of Appeals, which denied their three consolidated administrative appeals and thereby affirmed the revocation of Michael's building permit. Contrary to the Rocques' contentions, the Board of Appeals did not err (1) when it did not treat the issue of the buildability of the Rocques' lot as previously established as a matter of law because its earlier

decision was neither conclusive on the issue of buildability nor a final action, *see Town of North Berwick v. Jones*, 534 A.2d 667, 670 (Me. 1987) (recognizing that collateral estoppel prevents relitigation of issue actually litigated and decided in earlier case); or (2) when it ruled that the original zoning map was incorrect and that the Rocques' lot was in an unbuildable zone according to the correct map, *see Tompkins v. City of Presque Isle*, 571 A.2d 235, 236 (Me. 1990) (requiring demonstration that evidence clearly compels alternate finding to overturn municipal action on 80B appeal).

In addition, the Superior Court did not err in finding against the Rocques on either of their due process claims, as these claims were not raised before the Board of Appeals, and were therefore unpreserved. *See Cyr v. Cyr*, 432 A.2d 793, 797 (Me. 1981) ("No principle is better settled than that a party who raises an issue for the first time on appeal will be deemed to have waived the issue, even if the issue is one of constitutional law."). Finally, the Superior Court's judgment in favor of the Town on the Rocques' claim of equitable estoppel will not be vacated because the evidence did not compel a judgment in favor of the Rocques' complaint, *see Shackford & Gooch, Inc. v. Town of Kennebunk*, 486 A.2d 102, 105-06 (Me. 1984) (requiring proof of induced, reasonable reliance on the acts of another for estoppel), and equitable estoppel may not properly be asserted as a basis for affirmative relief, *see Buker v. Town of Sweden*, 644 A.2d 1042, 1044 (Me. 1994)

(stating that “equitable estoppel can be asserted against a municipality only as a defense and cannot be used as a weapon of assault”) (internal quotation omitted).

The entry is:

Judgment affirmed.

Attorney for plaintiffs:

Ronald W. Bourget, Esq.
Bourget & Bourget, P.A.
64 State Street
Augusta, ME 04330-5194

Attorney for defendant:

Alton C. Stevens, Esq.
Marden, Dubord, Bernier & Stevens
P.O. Box 708
Waterville, ME 04903-0708