

**VILLAGE OF QUOGUE
ZONING BOARD OF APPEALS
SATURDAY, AUGUST 24, 2019
3:00 P.M.**

Present: Chairman Robert Treuhold, Charles Mott, Bruce Peiffer, Alexander Ames, Brendan Ryan, Pamela Chepiga, and Village Attorney Richard DePetris

Absent: T. David Mullen

1) Mr. Treuhold brought the meeting to order. He asked for a motion to approve the minutes of the **June 8, 2019** meeting.

MR. AMES MADE A MOTION TO APPROVE THE MINUTES OF THE JUNE 8, 2019 MEETING. MR. PEIFFER SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

2) Mr. Treuhold said that the next meeting would be held on **Saturday, October 5, 2019 at 3:00 P.M.** Mr. Treuhold explained that the **Malik Trusts** application would be adjourned and held over to the October meeting.

3) Next on the agenda was the holdover application of **Christopher and Michelle Ewan, of 88 Dune Road**. The applicants were seeking a determination that the proposed reconstruction of the existing house be permitted under section 80-10B(1)(j) of the Coastal Erosion Hazard Area Code.

Attorney **Kittric Motz** was present for the applicants. She felt that, at this point in the proceedings, all her clients needed to do now was establish the replacement cost new for their property. They should then be able to sort out the building permit process. She submitted the itemized estimate that the Building Inspector had been waiting for, with a replacement cost new of \$1,516,864.00, putting the reconstruction cost cap at \$758,432.00. Ms. Motz felt that the Building Inspector was still basing his denials on the scope of the work instead of the cost of the work, and she felt that was inappropriate in this instance. She explained that, since they were willing to be audited throughout the construction process, she wanted the Board to overturn the Building Inspector's denial. Attorney Motz submitted a report of the case history of **Malone vs. the Village of Westhampton Beach** for the Board's review. In the case history there were code provisions that were very similar to Quogue's Code. The Westhampton Beach court specifically refused to judge on the scope of work and said that the changes proposed were cosmetic and not aesthetic, and that there was no cumulative language; so therefore, there is no authority to

impose a scope requirement to the Code. In the Quogue Code the restoration was defined in terms as a reconstruction that exceeds 50%. She felt that in their case it was clearly a reconstruction because they were under the 50% limit, and they were not a prohibitive restoration. They were making no prohibitive modifications. They were in the same footprint, using the same exterior and roof and the same function. Attorney Motz respectfully requested that the Board overturn the decision of the Building Inspector. Mr. Treuhold said the Board would review the case history that Attorney Motz submitted. He pointed out that their contractor came in and effectively gutted the house, and in the judgement of the Building Inspector there is only about 10 - 20% of the existing house that was now reusable. Attorney Motz explained that that was not the case at the time the permit was requested. Mr. Treuhold said that the present condition actually supports the ruling of the Building Inspector, as the Board did not see how it would be possible to reconstruct their house, based on what is now standing with the budget the owners have put forth. Attorney Motz felt that a client's choice of contractor had a lot to do with an estimate and their estimate, although fair, was lower than other contractors and was, in their opinion, something the Ewan's could work with. They were also prepared for the Building Inspector to have a close eye on their project and its costs.

Mr. Ewan explained that there were a lot of things they were no longer proposing to do in the new house, and since they were not planning to rebuild the identical house that used to be on the property, they could stay within their pricing limits. Attorney Motz reiterated that she felt it was unfair to make a decision based on the scope of the work when scope of work is not in the code; it is the cost of the job. The Board felt that if they looked at the ESNY estimate presented by the Ewan's, and the Building Inspector's analysis of what remains of the original house, it would show \$1,419,221.00 as the cost to reconstruct. The Board said that maybe the Ewan's contractor was planning to do less work and do it at a different price, but they still felt they did not have an analysis from The Ewan's contractor that they could use that was related to the latest information they now had in the record. Attorney Motz felt that the decision to be made was what was: what was the replacement cost new, and what would the 50% replacement number be, and that should be the number they have to work with for their reconstruction project. She explained that they had met with the Building Inspector and felt that he had already made up his mind that there was no way that the Mr. and Mrs. Ewan could complete their project within the amount they have projected.

Attorney Motz then reiterated that she respectfully requested that the Board overturn the decision of the Building Inspector. Mr. Treuhold explained that the Board had not been convinced from the evidence that had submitted, that they should overturn the decision of their Building Inspector. He explained that based upon the evidence to date, they were not prepared to grant the Ewan's request. He said depending on what Attorney Motz wanted, the Board could leave the matter open for reconsideration, or they could move for a written decision. Attorney Motz was still not comfortable with the Board allowing the Building Inspector to make a decision that she felt was based on the scope of the work and not the cost of the project, when that was what their Village Code allowed. She said her client was willing to work with whatever process that the Building Inspector required in terms of keeping track of their spending cap on the project, but she still felt that the starting point was the spending cost new. Mr. Treuhold said that the Board

would discuss the issue further with the Building Inspector and leave the application open. Attorney Motz requested to adjourn the Ewan application to the next meeting.

DECISION: MR. AMES MADE A MOTION TO ADJOURN THE EWAN'S APPEAL FOR DETERMINATION TO THE NEXT MEETING. MR. RYAN SECONDED THE MOTION. THE MOTION WAS UNANIMOUSLY CARRIED.

The meeting was adjourned.

Respectfully submitted by:  File date: 9/23/19